LEGISLATIVE HISTORY

Public Law 85-619
H. R. 2767

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Jan. 14, 1957	Rep. Moss introduced and discussed H. R. 2767 which was referred to the House Government Operations Committee. Print of bill and remarks of Rep. Moss.
Jan. 29, 1957	Sen. Hennings introduced and discussed S. 921 which was referred to the Senate Government Operations Committee. Print of bill and remarks of Sen. Hennings.
Feb. 21, 1957	S. 921 was re-referred to the Senate Judiciary Committee. Print of bill as re-referred.
Mar. 5, 1958	House committee ordered H. R. 2767 reported.
Mar. 6, 1958	House committee reported H. R. 2767 without amendment. H. Report No. 1461. Print of bill and report.
Mar. 17, 1958	H. R. 2767 was removed from the Consent Calendar at the request of Rep. Byrnes.
Apr. 2, 1958	House received from Government Operations Committee additional views on H. R. 2767. H. Report No. 1461, Part 2. Print of report.
Apr. 16, 1958	House passed H. R. 2767 without amendment.
Apr. 17, 1958	H. R. 2767 was referred to the Senate Judiciary Committee. Print of bill as referred.
May 5, 1958	Senate subcommittee ordered S. 921 reported without amendment.
May 21, 1958	Senate committee reported S. 921 without amendment. S. Report No. 1621. Print of bill and report.
June 23, 1958	Senate passed over S. 921 at the request of Sen. Talmadge.
July 31, 1958	Senate passed H. R. 2767 without amendment, in lieu of S. 921. H. R. 2767 indefinitely postponed due to passage of S. 921.
Aug. 12, 1958	Approved: Public Law 85-619. President's statement.

HEARINGS; H. Government Operations, misc. hearing, part 11, "Availability of Information from Federal Departments and Agencies;" July 22, 1957.
S. Judiciary Committee on S. 921, part 1; March 6, 1958.

DIGEST OF PUBLIC LAW 85-619

WITHHOLDING GOVERNMENT INFORMATION FROM PUBLIC. Amends Section 161 of the Revised Statutes of the U. S., which authorizes heads of departments to prescribe regulations for the custody, use, and preservation of records, papers, and property, so as to provide thatthis section does not authorize withholding information from the public or limiting the availability of records to the public.

H. R. 2767

A BILL

85TH CONGRESS
1ST SESSION

H. R. 2767

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1957

Mr. Moss introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

I

85TH CONGRESS
1ST SESSION

H. R. 2767

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

By Mr. Moss

JANUARY 14, 1957

Referred to the Committee on Government Operations

I submit that now is the time to plan for the exploitation of those potentialities in connection with the water-resource projects now being provided. Standing here in the lodge, amid this State park, in the company of men of the caliber of you who make up the Arkansas Basin Development Association, I think it is obvious that the region has the leadership and enterprise to match its physical resources. Your project is an opportunity, an opportunity for every one who has a hand in its planning, design, and construction, but most of all an opportunity for the people of the region to build around for a greater Southwest and a stronger and more prosperous America.

Mideast Policy

EXTENSION OF REMARKS
OF
HON. PAT McNAMARA
OF MICHIGAN
IN THE SENATE OF THE UNITED STATES
Monday, January 14, 1957

Mr. McNAMARA. Mr. President, I ask unanimous consent that an article submitted by the Senator from Arkansas [Mr. FULBRIGHT] entitled "Mideast Policy Must Look Beyond This Crisis," which appeared in the outlook section of the Washington Post and Times Herald of January 13, 1957, may be printed in the Appendix of the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MIDEAST POLICY MUST LOOK BEYOND THIS CRISIS

(By W. W. Rostow)

As was to a degree inevitable in a general declaration of direction and intent, the President's message to Congress January 5 left many questions unanswered. For example: Is the administration prepared to build a mobile task force to deter or to prosecute limited war? How does the administration propose to deal with Soviet military arrangements with Syria and Egypt? What about Jordan? What about the legal status of the canal and the unresolved Arab-Israel conflict?

The greatest of these unanswered questions relates, however, to the economic aspects of our Middle East policy. The President proposed to make available $400 million for a 2-year period, over and above the existing level of assistance to countries in that area. What American purposes should these dollars be made to serve? Under what criteria shall they be disbursed? To what use shall these funds be put in the Middle East?

THREE HALLMARKS

The President's proposal for enlarged economic aid to the Middle East was made in a statement that had three dominant characteristics: It was delivered in the context of a crisis; it was directed almost exclusively against Soviet communism; it was concerned primarily with the dangers of military aggression.

Now, American dollars have proved useful in the past in dealing with urgent crises caused by Communist military aggression or the threat of it. Dollars helped Greece in its civil war; they helped Chiang Kai-shek back onto his feet on Taiwan (Formosa) after 1949; they helped salvage Rhee in South Korea; they made possible Diem's tour de force in Vietnam since 1954; since the Korean war they have permitted the building of larger conventional military forces around the periphery of the Communist bloc than would otherwise now exist. And there are certain jobs to be done in the Middle East where emergency dollars can help: The Arab refugees; the clearance and repair of the Canal; getting the pipelines back in business.

But the tactical use of dollars to help salvage crisis situations has proved enormously expensive; and, more important, aid given in this context has often failed to press forward our major strategic interest in Asia, the Middle East, and Africa.

BROAD MODERNIZATION

What is that interest? It is that the governments and peoples of those areas increasingly commit their ardent individual and national aspirations, their energy, talent, and resources, to lifting the level of human welfare and dignity, to modernizing their societies in the widest sense. Only in a setting of such sustained effort is communism as a doctrine likely to be resisted, independence cherished against subversive blandishments or defended against open force and ambitions for enlarged status on the world scene responsibly pursued. Only in this setting is the overriding American interest—well-defined by the President—likely to be fulfilled: Our desire is a world environment of freedom, not servitude."

In no region of the world is the individual citizen poorer or harder pressed than in the Middle East. In no area is there a greater need for a channeling of organized efforts onto the long-run tasks of economic and social development. In no context is it more important for the United States to hold up a vision of what in the long pull these societies might achieve, consonant with their own ambitions, and for the United States to commit its aid, human sympathy and technical talent to a common enterprise.

This was the dimension lacking in the President's exposition of our interests and problems in the Middle East.

A successful economic aid program addressed to this aspect of the American interest in the Middle East cannot be conceived as a crash effort, designed to deal with an urgent crisis; it cannot be successfully projected as an anti-Communist venture; it cannot be successfully organized as a military assistance effort. It must be addressed to long-run goals, positive, constructive purposes, and to peaceful tasks. Paradoxically, it is only under such circumstances that American dollars are likely to help defeat communism, deter Soviet military aggression, and reduce the likelihood of future crises.

The central task of statesmanship over coming months—faced in different ways by the executive branch, Congress, and the American people as a whole—in translating the President's initiative into living policies and programs which fulfill the Nation's interest, may, then, prove to be the segregation of the economic program for the Middle East from the emergency military and diplomatic moves which surrounded its origin and relaunching it on a long-run basis which would maximize the likelihood that American aid might shift the direction of the forces at work within the Middle East toward increasingly constructive channels.

This longer run perspective on the Middle East may appear theoretical or idealistic in the context of a complex, urgent crisis. But an examination of our foreign aid allocations in the postwar decade reveals quickly that sums vastly larger than $200 million a year can be dissipated in areas much smaller than the Middle East, on short-term emergency grounds, yielding little more than postponed bankruptcy.

If one acts merely to get by the next stage in a crisis, one is likely to perpetuate it. If one makes our dollars a pawn in the game of short-run diplomacy or in the short-run task of countering particular Soviet moves, one is, in fact, likely to discourage the governments in the underdeveloped areas from facing with energy and persistence the difficult domestic problems on which the progress of their peoples largely depends.

If this view is correct, we must hold out to the nations of the Middle East the offer of sustained and substantial aid to the extent that they, by their efforts, are prepared to absorb it productively; and we should accompany this move with the offer of technical assistance designed to help organize the local programs, and trained personnel necessary to use decreased capital productively. Our standards for allocating aid should be tough but they should be economic, not political or military, standards.

In the tangled, inflamed state of the Middle East, with Suez and the Israel border unsettled, it would be fatuous to believe that such an offer would work quick magic or that it constitutes a substitute for a firm, military policy and a wise day-to-day diplomacy. The governments and peoples of the Middle East must, of course, be convinced that American military power is counterpoised against a Soviet invasion.

More than that, they must be convinced that, inside or outside the United Nations, the United States is prepared—in fact and in spirit—to use force if necessary to suppress limited war, Communist or non-Communist in origin. They must be convinced that Israel is there to stay. They must be convinced that the West can and will find ways of assuring the flow and economical transport of necessary oil supplies. A military and diplomatic stance designed to make these things crystal clear is a necessary condition for any American policy in the Middle East worthy of the name.

But we must—in a move quite distinct from these—hold out at the same time an offer to join with them in a carefully calculated but openhearted effort to develop and modernize their societies, not to frustrate the designs of Moscow but because we have come to perceive that some of their highest aspirations and some of our interests substantially overlap.

If we approach a Middle East program in these strategic terms, avoiding the dissipation of our dollars in a series of ad hoc tactical bargains, it is likely to become clear that the program should not and cannot stop at the somewhat ambiguous borders of the Middle East. For one thing, Pakistan is in the Baghdad Pact, and, in all conscience, it should receive enlarged support for its first 5-year plan.

Golden Jubilee of St. Michael's Roman Catholic Church, West Lynn, Mass.

EXTENSION OF REMARKS
OF
HON. THOMAS J. LANE
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, January 10, 1957

Mr. LANE. Mr. Speaker, St. Michael's Roman Catholic Church, in West Lynn, Mass., which serves the Polish community, recently observed its golden jubilee.

The story of a parish church, how it started and how it developed, is always a fascinating testimonial to faith, and pioneering effort.

When a few people cooperate to build a place of worship they can call their own, and then persevere through the years so that it will become a spiritual home for many, they are doing God's work on earth as members of the lay apostolate.

Such examples are always inspiring.

For they reveal to us that the greatest difficulties can be overcome, when men of good will join together in raising a temple dedicated to the honor and glory of God.

The Polish people have always been close to their church, and their devotion to it has won the respect of all who have observed their piety and reverence.

The main altar of St. Michael's is beautiful to behold.

Kneeling before its communion rail, parishioners experience a supreme happiness that endows them with the spiritual strength to rise above the trials and temptations of their daily lives.

On this golden jubilee, they offered special prayers for the faithful few whose vision and whose sacrifices half a century ago made this possible.

Under unanimous consent, I include in the CONGRESSIONAL RECORD the following program for St. Michael's jubilee celebration, from the October 7, 1956, issue of the Lynn Telegram-News:

THREE-DAY AFFAIR

City, State, and county officials together with clergy of Greater Lynn parishes and Polish churches in this area will join with St. Michael's parishioners in the 3-day golden jubilee celebration which will open with a Pontifical High Mass on Friday morning at 10 a. m.

Archbishop Richard J. Cushing will be the celebrant of the mass and will deliver the sermon.

Former parishioners now in the priesthood and former curates at the West Lynn church will assist the church prelate at the Solemn Pontifical Mass. They include: the Reverend William F. Maciaszek of the Home of the Little Flower, Hyde Park, assistant priest; Rt. Rev. Msgr. Ladislaus A. Sikorax of St. John the Baptiste Church, Hyde Park, first assistant deacon; Rt. Rev. Msgr. Alexander Ogonowski of Dracut, second assistant deacon; Rev. John S. Dziok of St. Hedwig's Church, East Cambridge, deacon; Rev. Edward G. Naguszewski of Holy Trinity Church, Lowell, subdeacon; Rev. Henry Ustaszewski of St. Joseph's Church, Claremont, N. H., a former parishioner, preacher; Very Rev. Msgr. Francis S. Rossiter, S. T. D., of St. John's Seminary, master of ceremonies, and Rev. Ferdinand Slejzer of Holy Trinity Church, Lowell, second master of ceremonies.

Also, Rev. Ferdinand Miszki, of St. Peter's Church, Norwood, metropolitan cross bearer; Rev. Francis D. Chmaj of St. Mary's parish, Boston, mitre bearer; Rev. Francis S. Miaskiewicz of St. Casimir's Church, Maynard, crozier bearer; Rev. Stanislaus T. Sypek of Emmanuel College, Boston, book bearer; Rev. Anthony Knojeczny, O. F. M. Conf., of St. Stanislaus Church, Chelsea, candle bearer; Rev. Vincent A. Jakus of Star of the Sea Church, Marblehead, gremial bearer; Rev. Alexander E. Szypko of St. John's Church, Peabody and Rev. J. Walter Stocklosa of St. Hedwig's Church, Cambridge, acolytes; and Rev. Chester Stempkowski of Sacred Heart Church, Ipswich, thurifer.

Following the Pontifical Mass, a jubilee lawn party will be conducted on the parish grounds from 2 to 5 p. m. Donations of aprons, handkerchiefs, dolls, novelties, linens, clothing, laundry bags, canned goods, baked goods and candy will be appreciated by the committee.

Donations may be left in the school cafeteria or with any members of the committee. They include: Mrs. Sophie Zielien chairman; Mrs. Mary Penkul, Mrs. Ann Gesek, Mrs. Helen Miplinski, Mrs. Sophie Hincman, Mrs. Sabina Sobolewski, Mrs. Wanda Neenan, Josephine Drobnich, Mrs. Stalla Szarkowska, and Mrs. Ann Krzywicki.

On Saturday morning at 9 a. m. requiem high mass will be celebrated for the deceased of the parish by the Rev. Ladislaus A. Ciesinski, pastor.

Highlighting the jubilee ball on Saturday evening at Briarcliff Lodge will be the selection of Miss Jubilee. Former Ward Six Councillor Alphonse M. Drewicz is chairman of this feature of the program.

A solemn high mass will be celebrated for all parishioners on Sunday morning at 10 a. m. by Father Ciesinski.

BANQUET ENDS PROGRAM

The celebration will be concluded with a banquet next Sunday afternoon at 5 p. m. in the English High School cafeteria.

Rev. Ladislaus A. Ciesinski, pastor, is honorary chairman of the affair and Walter J. Dembrowski is general chairman.

We Commend a Texas Gas Selling Job

EXTENSION OF REMARKS
OF
HON. WILLIAM H. NATCHER
OF KENTUCKY
IN THE HOUSE OF REPRESENTATIVES
Monday, January 14, 1957

Mr. NATCHER. Mr. Speaker, under leave to extend my remarks in the RECORD, I enclose herewith an editorial entitled "We Commend a Texas Gas Selling Job," which appeared in the December 31, 1956, issue of the Owensboro Messenger and Inquirer of Owensboro, Ky.

The people in Owensboro and Daviess County are indeed fortunate to have for a local industry the Texas Gas Transmission Corp. Operating over a 7-State sphere, this corporation every day pushes over 1 billion cubic feet of gas through its 3,500 miles of pipeline to meet the needs of the people it serves in 128 counties.

Notwithstanding the fact that Texas Gas is incorporated in Delaware, it has its home office in Owensboro. The officials and employees are all outstanding citizens and a natural asset to the community. Fully realizing that Texas Gas can expand only as the Big River region expands, the officials have launched an elaborate sales program. The prime purpose of this program is to encourage the industrialization of this region. Over the past 7 years Texas Gas has directly and indirectly encouraged industry to invest over $2 billion in expanding and building new plants. Seventy million dollars has been invested in new chemical plants alone.

The 128 counties in the Big River region and this entire section of the United States are deeply indebted to Texas Gas Transmission Corp. not only for the cheap, clean fuel it furnishes, but for its promotion of industrialization in this area abundant in natural resources.

The editorial is as follows:

WE COMMEND A TEXAS GAS SELLING JOB

Owensboro, like so many other cities, is accustomed to looking on its industries primarily as employers of people and contributors to the general welfare of the community from within.

While looking through the December 15 issue of Forbes, one of the Nation's leading business and finance magazines, we saw a full-page Texas Gas Transmission Corp. advertisement extolling the advantages of the Big River region as plant sites for other industries. We were reminded that Owensboro is doubly blessed to be the home of this firm, by which this city and this area benefit from within and from without.

The signature of the advertisement which reads: "Texas Gas Transmission Corp., General Offices, Owensboro, Ky.," help to publicize Owensboro as a center of importance. This alone is valuable to Owensboro.

While the text of the advertisement doesn't single out Owensboro, it does include it in the 128-county sector of the Rig River region whose industrial advantages are listed. They are so well stated we believe you would want to read them, so here they are:

"There's power at your fingertips in the seven-State area served by Texas Gas Transmission Corp.

"Within the Big River region, natural gas supplies are generous. Texas Gas already has enough reserves of this modern fuel to meet your company's needs for years to come.

"The region's private and public utilities have created one of the largest concentrations of electric power available in any comparable area of the world. The many navigable rivers provide more than adequate transportation, and an abundance of water for industrial processing and other purposes. Fuel oil is an important product. This area also possesses one of the largest coal reserves in the United States.

"In the 128-county sector served by Texas Gas, industry has invested nearly $2 billion in new and expanded plants in the last 7 years. All through the region, power-conscious industry is finding that a balanced economy and a wide diversity of production are helping to accelerate their progress.

"Memorandum to the key executives in your firm responsible for plant location: Get the full Big River region story. We'd be glad to tell you in detail why and how your company can realize its full growth potential here."

Texas Gas deserves a commendation from Owensboro, in general, and a special commendation from the chamber of commerce, in particular, for a selling job well done.

A Bill To Amend Title 5, United States Code, Section 22

EXTENSION OF REMARKS
OF
HON. JOHN E. MOSS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Monday, January 14, 1957

Mr. MOSS. Mr. Speaker, Congressman WILLIAM L. DAWSON, chairman of the House Government Operations Committee, Congressman DANTE B. FASCELL, and I today introduced identical bills to amend title 5, United States Code. The proposal to amend the statute, restoring its original function as a "housekeeping" law, has met wide support from persons interested in the availability of Government information.

The Special Government Information Subcommittee of the House Government Operations Committee invited comments on the proposed amendment from lawyers, newsmen, scientists, and educators

who have participated in subcommittee hearings on the information restrictions imposed by the Federal executive agencies.

The replies of these men, each an expert in his field, document the need to amend the statute in order to increase the flow of information from the Federal agencies.

Following are excerpts from the comments on the proposed legislation and on a possible amendment of title 5, United States Code, section 1002, which is being considered for later introduction:

Chief Judge Leon R. Yankwich, United States District Court, Southern District of California:

"I have studied the proposed amendments to sections 22 and 1002 of title 5, United States Code. In my opinion they will achieve the aim sought by the committee which is to establish a positive right of the public to information concerning Federal public business and the contents of records pertaining to it."

William Dwight, president, Ameircan Newspaper Publishers Association:

"The American Newspaper Publishers Association has for a long time been concerned at the increasing secrecy surrounding many activities of Government departments and agencies and the inability of newspapers to get the facts as to these activities so that they in turn could keep the public informed about how public servants are conducting the public's business.

"For that reason we welcome any proposal which will tend to improve this situation.

"For more than a year the ANPA has been studying many pieces of proposed legislation to determine the extent to which such proposals contain provisions for making public or giving the public access to infromation about Government departments and agencies which such proposed legislation affected. In many cases Members of the Senate and House have asked for a suggested draft for such a provision and the ANPA has submitted for consideration language somewhat as follows:

" 'There shall be maintained complete records on all matters provided for in this act. Such records shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the United States District Court for the District of Columbia on the application of any person.'

"We recognize that the two legislative proposals prepared by the staff of the House Government Information Subcommittee represent another approach to this problem through enactment of overall legislation guaranteeing free access to public records. The ANPA approves such a legislative guarantee.

"While we have not had any complete legal analysis of the specific language suggested by the subcommittee staff, it seems to this association that the proposed amendments to title 5, United States Code, section 22, and title 5, United States Code, section 1002, would tend greatly to obviate many of the difficulties which the public, including the press, now experience in their efforts to get information about Government departments and agencies to which the public is rightfully entitled.

"If these proposals are interpreted by the courts in line with the intent of the Congress should it enact such legislation, it will mean that a great step forward has been taken in eliminating the secrecy that surrounds many Government activities today."

Dr. Harold L. Cross, counsel, freedom of information committee of the American Society of Newspaper Editors, and author of The People's Right To Know:

"I have no special—if, indeed I have any—competence in Federal legislative draftsmanship, but I have no doubt whatever that these staff suggestions are the sound approach to the problem of secrecy created by denial of access to public records and proceedings. It follows that their enactment in form or substance would be in the public interest. They add up to an evidence of fine intelligent devotion to the correction of a problem which the hearings have effectively documented.

"While they are not the only barricades of secrecy, the 3 dealt with in the suggestions are by far the most serious—title 5, United States Code, section 22; title 5, United States Code, section 1002—Administrative Procedure Act—and the absence of judicial review of denials of access. It is clear, too, that to bring about any real diminution of secrecy each of the three must receive remedial legislative attention.

"Title 5, United States Code, section 22, relating to executive departments, as currently interpreted and applied, sanctions secrecy for records of Government action, whether or not that action is taken in 'proceedings.' Title 5, United States Code, section 1002, relating to administrative agencies and probably to executive departments in respect of administrative action taken in proceedings as currently interpreted and applied, sanctions secrecy for Government action which is taken in proceedings.

"You are everlastingly right that 'One of the major problems is to make everyone aware of the fact that there exists today no real judicial review of Federal administrative action withholding information or records.' I have the abiding conviction that the relation of the citizen to his government in these matters should be of 'right' determinable, as are other rights, pursuant to Constitution, legislation, and judicial decision. It cannot properly be a mere matter of grace however sugarcoated by the term 'discretion.' Yet the hearings have established the fact you state. Of course, the 'right' is not absolute or applicable universally to all records.

"But the exceptions should be determinable (as the principle itself should be and as is the case at State and municipal levels) as matters of law. There can be no doubt that the law would determine that some of the exceptions should be left to official discretion or that the law, in the process of determining what exceptions there should be and which of the exceptions should be discretionary, is fully equal to the protection of the public interest."

J. R. Wiggins, executive editor, the Washington Post and Times Herald and author of Freedom or Secrecy:

"I have read your tentative legislative proposals with a great deal of interest. I agree with Harold Cross that they are certainly in the right direction and strike at the seat of our difficulties.

"One lawyer with whom I discussed this matter suggested to me that in striking out title 5, United States Code annotated, section 22 as the foundation for regulations authorizing withholding of information, there ought to be some recognition of where this leaves some of the regulations already extant. He suggested that the hearings on the proposal ought to include witnesses for Government agencies that have such regulations and ought to be accompanied by bills authorizing legislatively some explicit withholding of information conceded to be necessary.

"As an alternative to this he suggested that it might be wise to put in a deferred effective date of the amendments, say a year from enactment, during which agencies would be on notice and able to bring forward legislative proposals for express authority to withhold particular matters."

Paul A. Scherer, executive officer of the Carnegie Institution of Washington:

"It is a pleasure to comment on the material which you forwarded on October 17. It seems to me that the issue has been carefully stated, that the argument is well presented, and that the proposed amendments are in the public interest.

"I think it is very happy to review the key words of the statute as defined in Webster's Dictionary. It would be interesting and perhaps profitable also to cite the defintions as they existed in 1789. This might be more than a bit of scholarly research, because it would shed direct light upon the intent of the Congress at the time that the act was enacted. Certainly it is very important that this matter be completely clarified and that there is direct responsibility for the rules and regulations which are promulgated and which thereupon have much of the force and effect of law. To a layman it would seem that rules and regulations and those who draft them are responsive to the legislative branch. I have recently read a rule promulgated by Internal Revenue Service in connection with pension plans which seems to me to run directly contrary to the spirit of the act, and I speak of the Internal Revenue Act of 1954. This is probably not of much importance because the rule is so clearly an invasion of public right and interest that I do not think it will be sustained when tested in the Tax Court. Its real interest is that it is completely illustrative of the extent to which men of good intent can by the cumulative writing of rules and regulations move to defeat the intent of Congress."

Guy Easterly, publisher of the La Follette, Tenn., Press and chairman of the National Editorial Association Freedom of Information Committee:

"Thank you for your letter of October 17 and two tentative legislative proposals. The subcommittee has been more than kind, and I believe has done a good work.

"The proposals seem to be in good shape, although I am not too familiar with the statutes and their meanings. The amendment to title 5, United States Code, section 22, seems to take care of the information part of that code, although we might wish that the interpretation you have given it under (d) might be eliminated. We agree that there are cases where information must be withheld, at least for a time. But we believe that even the suggestion of secrecy is bad. However we shall have to trust Congress to be sensible about such things."

W. Albert Noyes, Jr., department of chemistry, dean of Graduate School, the University of Rochester, Rochester, N. Y.:

"I have your letter of October 17, 1956, and enclosed legislative proposals and have studied them carefully. The legislative proposals should help clarify the present situation, but I am impressed by the tremendous complexity of the problem. In the field of science there is no clear-cut dividing line between information which should be withheld for reasons of national security and information which need not be withheld. The decisions on these matters must be made by specialists. The difficulty usually is that the decisions are not made by competent persons able to distinguish between matters of common knowledge or matters easily deducible from common knowledge and matters which are really new.

"I am afraid that I can be of little help in this connection but the agencies should somehow require decisions about matters affecting the national security to be made by specialists in the questions involved."

Dean Wolfle, executive officer, American Association for the Advancement of Science, Washington, D. C.:

"Thank you for the opportunity to consider the two legislative proposals prepared by the staff of the House Government Information Subcommittee. I am in full accord with the purpose of the proposed changes, for it seems to me that as a matter

of general policy, the operations of our Government should be matters of open information to a public that can feel free to review, commend, or criticize.

"There are, of course, some exceptions that must be made. Most obviously, it is necessary to limit access to properly designated categories of information that affect national security.

"It is also desirable, I believe, to keep certain personal and personnel information out of the public record. Letters of recommendation, the detailed reasons for terminating an employment, and similar matters would seem to fall in this category. You have apparently the same point in mind in writing on page nine, 'It is not intended that such matters as investigations of personnel be included.'

"The third category of material that might appropriately be kept out of the public record includes the detailed considerations within an agency that lead to an operating decision. Congressional debates and votes are a matter of public record, as are judicial votes and, through the use of majority and minority reports, the reasoning on which they were based. Executive agencies, however, are neither legislative nor judicial in function, and while their decisions, policies, and procedures should be matters of public record, it does not seem to me necessary to require that all of the discussion preceding a decision need be.

"Legislation that states clearly that it is the responsibility of a Federal agency to make public its procedures, policies, decisions, and the information it collects, and that only certain carefully designated categories of information are exempt from this general policy, is a highly desirable improvement over the present confused situation."

Jacob Scher, professor of journalism, Northwestern University; editor of the Freedom of Information News Digest of the National Editorial Association; and special counsel, House Government Information Subcommittee:

"The draft proposals for amendatory legislation concerning title 5, United States Code, sections 22 and 1002 (c) sound excellent to me. I have also conferred with some of my colleagues who are familiar with the legislative problem and they agree that this is precisely the step that next should be taken. It will start the ball rolling, for one thing, and for another it will correct the ambiguities that exist in both statutes. Just this much alone would be a noted achievement. I can find no room to quarrel with any of the amending language."

James S. Pope, executive editor, the Courier-Journal, Louisville, Ky., and winner of the 1956 John Peter Zenger Freedom of the Press award:

"I have read very carefully your staff's commentary on suggested amendments to statutes that affect Government information.

"I do not believe the House Government Information Subcommittee could make a finer start in seeking reform in this confused field than by getting these amendments passed. They will certainly not cure everything but I do believe they will remove the pretexts we have encountered most often when we complained about restrictions on information."

Hans A. Klagsbrunn of the law firm Klagsbrunn, Hanes & Irwin, Washington, D. C.:

"1. I believe you have done a very good job in negativing the inferences of secrecy that have been drawn from title 5, United States Code, section 22, and, as you say, in establishing it again as a housekeeping statute without basis for the withholding of information or records.

"2. As to title 5, United States Code, section 1002, the subjects of public information from a governmental operations point of view, and of public information as it relates to the Administrative Procedure Act, necessarily overlap a great deal. For that reason I think it would be well to have any amendments you propose coordinated with amendments being proposed to the APA by the American Bar Association, although at the same time you will want to make certain that broad public information policy is stated for the Government on an across-the-board basis. Unless there is such coordination I am afraid that confusion will arise in people's minds that might simply raise further and unnecessary obstacles to the enactment of desirable legislation.

"I would like, therefore, to suggest, with respect to title 5, United States Code, section 1002, that you do particularly two things: First, reaffirm the same intention you have expressed with respect to title 5, United States Code, section 22; namely, that no negative inferences favoring secrecy may be drawn from the language of existing law. This you would want to include, as you have, in an exception clause, and the clause itself could be applied either to the current APA or to any proposed administrative code. Second, insofar as your proposed language for the rest of title 5, United States Code, section 1002 may differ from the ABA proposal, I think it would be highly desirable for you to state that your suggestions in this regard should be taken up and analyzed at the same time that the ABA proposal is studied by Congress, in order that all alternatives and points of view may receive coordinated and thorough study * * *

"3. Finally, I hope that, in addition to amending existing statutes, you are giving thought to a simple new over-all law stating a clear policy of the Congress to have information from Government sources made readily available, except upon an affirmative showing of good reasons for secrecy pursuant to specific exception legislation permitting nondisclosure. In short, the presumption should favor disclosure, and the burden of proof be placed on the proponents of secrecy."

F. S. Siebert, director, School of Journalism and Communications, University of Illinois, Urbana, Ill.:

"Thank you for sending me a copy of the two tentative legislative proposals. I am impressed with the thoroughness with which you and your staff have prepared the materials. I have read these suggestions carefully and can find no serious error. I sincerely hope that your capable committee can impress the Congress with the necessity for some remedial legislation."

Herbert Brucker, chairman of the freedom of information committee of the American Society of Newspaper Editors, editor of the Hartford, Conn., Courant, and author of Freedom of Information:

"I was fascinated and delighted to see the proposed revisions in the Federal statutes that you had worked up in the interests of freedom of information.

"I am obviously not an expert in anything having to do with legislation. I should think that someone like Harold Cross would be your best bet for an opinion on that. But to me they accomplish their purpose. What turned up during the Moss committee hearings was really shocking. I think that your people found the cause of it, and that the suggested changes will introduce a wholly new standard and attitude into the Federal Government. So put me down, subject to correction by those more experienced in this field, as feeling that the Congress would do the people of this country and the cause of free government a great service by accepting these changes."

John B. Gage of the law firm Gage, Hillix, Moore & Park, Kansas City, Mo.:

"The legislative proposals which I have rather hastily reviewed are very interesting. The proposed revision of section 1002 should be, and no doubt has been, called to the attention of the drafting committee of the section of administrative law working on the revision of the Administrative Procedure Act. It should also be called to the attention of the advisory committee and special committee of the board of governors and house of delegates of the American Bar Association. While it is not the approach to the solution of the problem I had suggested, i. e., requiring each agency to formulate rules in regard to the disclosure of information to be submitted to Congress for approval (or disapproval) within a specific period after the enactment of the law it is a solution that has many advantages. It is sweeping and far reaching. To use an old Missouri phrase as far as the agencies are concerned when they study it 'it will set the hair on the dog.' It will, I believe, encounter great agency opposition. Congressional control of exemption from its requirements is maintained by requiring the agencies to obtain the right to withhold specific information—other than that covered by the exceptions in subparagraph (f)—from Congress itself. It would avoid the necessity of having a committee in Congress properly staffed to go over, in the case of each agency, rules and regulations relating to the disclosure of information to the public. While that would enable each agency to propose the means whereby all the varied situations justifying nondisclosure could be met, it would impose on Congress a difficult task. To one who, like myself, has always believed that governmental records, papers and documents should prima facie be open to inspection by the public and that the right of nondisclosure should be the exception authorized by law rather than the rule of action this solution is satisfactory."

"The requirement in subparagraph (d) that procedural agency rules should specify whether or not the agency follows the doctrine of stare decisis or whether an ad hoc system is followed in adjudication is more interesting and would clearly tend to promote a greater degree of fairness or at least a higher degree of advance information as to what to expect in agency adjudication. The amendment will have to be studied by the committees in the light of the definition of 'adjudication' to be incorporated in the revised administrative procedure act. The present draft of this definition includes under the term 'adjudication' practically all matters of agency action which do not fall within the definition of 'rulemaking' as set forth in the draft. There is the possibility that this definition of 'adjudication' would give to the subparagraph (d) too broad an application and include types of agency action to which the doctrine of stare decisis would have no possible application."

L. V. Berkner, president of Associated Universities, Inc., New York, N. Y.:

"I believe that such action as is proposed would aid greatly in the functioning of the democratic processes. Quite aside from the detrimental effects that immediately arise from withholding of nonclassified information, it seems to me in the long run that the executive branch itself suffers from lack of public knowledge of its actions and their intent. Therefore, I believe that both the Government and the people would benefit by free access to nonclassified information."

Ashley Sellers, chairman, special committee on legal services and procedure of the American Bar Association:

"I have reviewed these proposals, including the staff explanations, with interest, and I am entirely sympathetic with the objective of these proposals which, basically, is to limit further the restrictions which may legitimately be imposed with respect to the withholding of information or limiting the availability of records to the public. I feel that there has been far too much restriction imposed in this regard. Indeed, it has been amazing to me to learn of the numerous in-

stances in which the Federal officials have used the two statutes, which would be amended by these proposals, as a means of withholding information from people or of making records nonavailable. This has been particularly amazing with respect to the Administrative Procedure Act, one of the purposes of which was to make it possible for the public to secure more information. Yet we know that the provisions of the Administrative Procedure Act have actually been used as an excuse to withhold information from the public.

"In my opinion, only the exceptional case justifies the withholding of information from the public or the placing of public records in a nonavailable category.

"In view of the foregoing attitude on my part, I am entirely sympathetic with the objectives of your staff.

"I want to point out that, in this letter, I am speaking purely from a personal standpoint. As you know, I am also chairman of the special committee on legal services and procedure of the American Bar Association. Our committee has already made recommendations to the association on the subject of a new Code of Federal Administrative Procedure, one of the provisions of which would deal with the subject of public information, and would replace section 2 of the Administrative Procedure Act. Our recommendation in this regard was adopted by the association at its midyear meeting last February. We are now engaged in drafting legislation which would carry this recommendation into effect. We have, within our special committee, an advisory group which is due to make a report on this subject in the early part of December. Until a report is received from this advisory group, I am unable to say exactly what the proposed legislation which our special committee will present to the Congress for consideration will be. I am sure, however, that such legislation will have, as its objective, the same objective as that of your staff, as reflected in the tentative drafts submitted with your letter of October 17, 1956."

Elmer Hutchisson, dean of the graduate school, Case Institute of Technology, Cleveland, Ohio:

"I appreciated greatly the opportunity of reading the staff suggestions included in your letter of October 17 to help solve the problem of increasing restrictions on information from Federal departments and agencies. I had not realized the complexity of the legal matters involved. Unfortunately my inexperience in such matters precludes the possibility of my making any very helpful comments on this phase of the problem.

"In the hearings there was considerable discussion of an automatic time limit associated with secrecy restrictions. This seemed to me to be an excellent suggestion, and I hope it can be introduced into any legislation which is proposed.

"There seems to me also to be an important distinction between the release of new knowledge and the release of ordinary business records. Knowledge is an accumulative phenomenon which thrives on the interchange of ideas, and as a result secrecy can and does exert a distinct negative effect which weakens us as a Nation. The same cannot be said of ordinary business records, and if a separation of these items can be made, it would seem to me desirable to concentrate as much effort as possible on the freer dissemination of new knowledge."

Gerard Piel, publisher of Scientific American magazine, New York, N. Y.:

"The staff suggestions fall into an area well outside of my competence, so I do not have any worthwhile suggestions to make. I must say, however, that the reforms indicated engage my intuitive approval.

"From my amateur cantage is seems that we have here one of those issues in the realm of separation of powers, where the Congress and the Executive must arrive at some sort of 'treaty,' which will set forth a clear understanding as to just what freedom the Executive power has in withholding information. If this is a fair statement of the problem, then it seems to me that your staff paper suggests a fair settlement.

"It certainly comes as a shock to me, as a journalist, to realize that the information policies of the Executive Department have been held to be outside of the review power of the judiciary. I am glad that the Congress is not so timid."

Robert B. Broda, professor of physics, University of California:

"As a professor of physics, I find the legal matters you present somewhat out of my field of competence, but as a citizen I agree heartily with your general proposal that the public and, in particular, the legislative branch of the Government, should have access to the records and information which the departments of the Government may have, and that the only exceptions to this should be those which are specifically exempt by statute. I presume that there would be a statute which would protect the national security and this would automatically create an exemption."

Spiritual Understanding

EXTENSION OF REMARKS
OF
HON. ROSS BASS
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES

Monday, January 7, 1957

Mr. BASS of Tennessee. Mr. Speaker, under leave to extend my remarks in the RECORD, I would like to insert a letter from Mr. Marcus Gallaher, of Lawrenceburg, Tenn. I have also had several requests from constituents in my district that this material be inserted in the CONGRESSIONAL RECORD.

The letter follows:

LAWRENCEBURG, TENN., *December 15, 1956.*
Hon. ROSS BASS,
House of Representatives,
Washington, D. C.

DEAR ROSS: The enclosed copy of my letter to the Honorable John Foster Dulles, Secretary of State, speaks for itself.

An appeal from another country brings once again into sharp focus the tragic intolerance suffered by Protestants not only deprived of freedom of conscience by church-state union in Spain, but in spite of article 42 of the Civil Code, Protestant weddings are not legal and Protestant burial there is, to all intents and purposes, a Potters' field proposition with the committal service in privatc.

A UP dispatch from Geneva earlier this year had carried the protest of the World Council of Churches against the closing of the Union Theological Seminary at Madrid, in existence 70 years, as a most serious infringement of religious liberty which at the very time of Spain's entrance into the United Nations contradicts the universal declaration of human rights on the principle of respect of the rights of religious minorities.

The pages of history are replete with the iniquities of official churches as resultant manifestations of power and mastery not related to the redemption of man and in this instance, emphasizes again, in adding to that catalog of errors—that where the Roman Catholic Church is supreme, it is absolute and totalitarian—serves to bring into clearer focus the dual standard and practice of some who deny religious freedom to others which they so earnestly appropriate for themselves while insisting in various parts of the world upon the exclusive right to maintain sectarian schools and demanding special privileges in nations enjoying freedom of religion.

Whether the closing is in Spain or Colombia where more than 200 Protestant schools have been closed since 1948, or Portuguese East Africa where in a decree issued last December 22 by the Portuguese Government steps were taken to eradicate all Protestant-affiliated schools in that country—it is one of the most revealing ironies of our contemporary two-world ideologies that the evil reaching its heighth in the infamous Red persecution of all religions is rivaled only by the actions of free world dictatorships usually following some hierarchal declaration to the effect that the government must eliminate all faiths in order to protect the Roman Catholic Church; significantly, bigotry at high tide in a free society.

In nations like our own enjoying constitutional separation of the religious and the civil there were those last year who apparently considered religious freedom less important than other constitutional guaranties—who see no fence separating church and state, and who in fact have never accepted the Supreme Court's interpretation of the first amendment. Despite the American principle of church-state separation implicit and explicit in the first amendment various adepts are using subtle expedients in compromises which if not at first overtly would by indirection alter that noble part of our Constitution preparatory to more patent violations in general invasion of the wall of separation principle. To have an "enforced uniformity of religion," means that a country usually finds the corollary of a close relationship between church and school, and religion and education, dominant—and its by-products of unanimity and stagnation carriers of the virus of blatant hundred-percentism. To successfully educate and indoctrinate the child, religion must pervade and permeate all education. The principle of subordination of the state to the church is upheld in the injunctions of the Syllabus of Pius IX: "The ecclesiastical power must exercise its authority without the permission or assent of government * * * In case of conflict, civil right can never prevail * * * It is expedient that the Catholic religion be the only State religion at the exclusion of all other cults * * * Catholics cannot approve an educational system separate from Catholic faith and from the power of the Church."

The demand of the American Catholic hierarchy for a larger share of public funds is not supported by some liberal American Catholics, however, who equally with Protestants and Jews support the point of view of our dominant culture, as forthrightly and succinctly stated by former Congressman Jacobs: "As long as we have the same right to send our children to public schools as anyone else, we are not discriminated against. Our parochial schools are an adjunct of our religion. The issue is clear—either you keep parochial schools and maintain them, or accept public funds and convert the schools into public schools. As Catholics, we do not have the right to a separate publicly supported school system, nor does any other group of people have such a right." Mr. Justice Jackson in his dissent in the Everson case, stated: "Catholic education is the rock on which the whole structure rests, and to render tax aid to its church school is indistinguishable to me from rendering the same aid to the church itself." The freedom to run sectarian schools does not involve the right to use tax dollars for that purpose, nor does the startling and revealing fact that robed sisters and nuns are now teaching in more than 300 American public schools separate them from their garb. What they wear, the way they wear it—is part of them and registers indelibly on the child's mind

and character. Religious controversies, pointing to chaos, bigotry, and tyranny are fatal to democratic institutions, and can only be prevented by rigid separation of church schools and State funds as well as church and state.

Thus history continues to demonstrate how truly fortunate America is, that separation, a device established by the Founding Fathers, has preserved the freedom of religion—a freedom not measured in terms of majorities and minorities, but only in terms of individuals, for religion is verily an act of individuality, voluntary and unconstrained. It is small wonder, then, that Americans generally, balk at opening the door at all to a breakdown of the constitutional separation of church and state which has safeguarded the rights of all religious groups.

According to a New York Daily News dispatch a few months ago, a pastoral letter signed by all the Argentine bishops and read at all Masses, stated bluntly, devastatingly: "It is a sin to suggest that any Catholic, by virtue of the fact that he is also a citizen, has a right or duty to act as he thinks best in politics." Thus it would appear difficult to distinguish since one confounds the other between political and ecclesiastical Catholicism as the two are so often subtilely scrambled, either used as may become expedient at the moment under that baneful principle, "the end justifies the means."

From any vantage point in this changing picture of vestigial Peronism the curse of totalitarianism is obviously calamitous to human liberty. Comment on my part would be like gilding the lily, but is it not more than an eerie coincidence—in fact, a paradoxical thought disturbing in its implications, that only in the arrogant and presumptuous exclusiveness of a totalitarian religion is the mind of man held in subjection and enslaved to any authority, as formidable as it may be, within the countries of the free world today—that one finds a counterpart of such tyranny only in the ruthless suppression by a totalitarian Fascist or Communist state, of the individual's freedom and liberty.

Just as free enterprise plays an irreplaceable role in the life of the nations of the free world, equally so, should not free fellowships bascd upon the principle of voluntariness in matters of conscience and belief, mutually respected and tolerated—be verily indicative of an inevitable distinguishing identity of free peoples and play a positive and irrepressible role in their survival struggle of the nuclear age. Even so, as reported in Time, July 9, 1956, the Very Reverend Francis J. Connell, one of the recognized top authorities of the Roman Catholic Church on canon law, in replying to a doctrinal question submitted by a reader seeking guidance and relating to the offer of a Catholic fraternal organization in offering the use of its hall to a Baptist church whose building had been destroyed by fire stated in the American Ecclesiastical Review, a monthly magazine for the clergy, published by the Catholic University of America, that:

"According to the ideas of intercredal fellowship and brotherhood current in the United States, and accepted by many Catholics, the Catholic organization performed a commendable deed. (But) some scandal was surely present in the fostering of the erroneous belief that all religions are good and should be aided. I would say unhesitatingly that the Catholic organization should not have made the offer. However much we may esteem our non-Catholic brethren personally and admire their sincerity and fervor in the practice of their religion, we must remember that their religion is false and that its practice is opposed to the commandment of Jesus Christ that all men profess the one religion which He established. * * * It is well to add that if a Catholic church burns down and a non-Catholic congregation offers its hall for Sunday mass (which many well-meaning non-Catholics in our land would readily do) it would be the best policy to decline the invitation, since in that way no obligation would be undertaken that might call for a similar service if the situation were reversed."

Across history where spiritual leadership has assumed temporal ascendancy, spiritual dominance and intolerance have run rampant, contrariwise, America, established on the watchword of freedom, has had a continual sequence of freedom's pilgrimages to her shores. Under our system of religious toleration, from the Jesuit exiles of the late 18th century to our present vocal groups who would generate bias in the guise of sentiment to satiate group pressures along political, religious, or ethnic patterns and the Iron Curtain escapees of the moment, the United States has been a haven of refuge and asylum. From the Pilgrims of the Mayflower to the priests of the present, America has been a land of freedom of the individual, where one believes in the right to be free, in the way of life where he is privileged to think and speak as he may choose and to worship God as he thinks He should be worshiped, and what is equally important, the right to be different—for he knows that if he ever loses his right to be different he loses his right to be free—to live humbly as a human being with a dignity becoming a child of God; therefore, to bigotry he gives no sanction, to intolerance no support, in a society dedicated to the preservation of brotherhood and freedom. Let us never fail in our harried going, therefore, to pause and turn our thoughts toward those whose courage and suffering, yea, whose willing sacrifices of life and blood and treasure made possible the burgeoning and flourishing of these blessings—and resolve to match their legacy in our time, for once lost, freedom is seldom found again.

Every stanza of the hymn, America, carries this message of freedom. The Liberty Bell with its inscribed message from the Bible: "proclaim liberty throughout the land and unto all the inhabitants thereof," is a constant reminder to us to cherish our heritage of freedom. In the dawn and sunrise of this Nation's history our forebears who established under free institutions freedom as we have known it in America, lived with the Holy Bible which they cherished under their arm as they walked by day, and with their children gathered around them searched that blood-stained volume by night since no man commanded their conscience. Only by preserving our faith as a people in Almighty God is it possible to insure the preservation of our freedom. Liberty is every nation's birthright because it is every individual's gift from God. In our day the spiritual concept of man and his life is again challenged in vain, because man by his nature, dignity and destiny is dependent upon God. Towering above the peril and changing issues of these uncertain times still stands inviolable, the unchanging and most profound challenge of all centuries—what shall we do with Jesus—for the good and full life remains the free life committed through faith to do the will of God, today and always. It gives the largest amount of freedom and is alone worthy of emulation, for Jesus said, "Seek ye first the kingdom of God and all these things shall be added unto you."

Forgetful of our history and unmindful of the prayer of the Saviour for the Church before His betrayal, that His disciples might all be one and the world might believe God sent Him, L'Osservatore della Domenica, the unofficial Vatican City weekly, issue of February 5, according to Newsweek gave its Italian readers a sharply edged thumbnail survey of American Protestantism. "Baptists," L'Osservatore itemized, "forbid meat; the Methodists want only people who don't drink at the head of their church." More lengthy excerpts from the above noted magazine article, are:

"American Protestants go to church for amusement and are less concerned about religious doctrine than about parking facilities.

"American Protestants choose their churches on the basis of the personality of the pastor, the politeness of the usher, and the ease of parking the car."

Undeterred by factual errors and void of understanding, yet with sad contrast to the transcendent concept of compassion and good will among men established in the Sermon on the Mount, its pondering concluded:

"The American Protestant leaves home for a religious service and goes into the first church that doesn't smell Catholic." It would appear that the faithful could while upholding their convictions report more objectively and charitably about brethren separated in the faith, especially so, in these days when we are painfully aware that the way of Christ is the way of the Cross.

The time has long since passed when religious bigotry should raise it hideous head within countries of the free world. Whenever and wherever intolerance does assert itself it must surely be without reflection by those who have been washed in the blood of the Lamb and are unmindful of their own Christian conscience. The sound of His praises in hymns of approaching Christmas services will be heard only with difficulty or in stealth in many places, yet today's turbulent times should invoke for those in freedom who claim His name as their own less zealotry and divisive prejudice and more apostolic humility and prudence in applying the words of Christ to our contemporary world of atomic martial stalemate, since spiritual understanding is one way to promote peace and tolerance which demand a true fellowship of peoples of all religious beliefs.

Under God's benign providence all of His children in America have their parking problems, yet, can "give a reason for the hope that is within them," and, in His own time having come of age spiritually the world over will treat as equally deserving respect and equality all religions whether or not they share their own views on salvation. So to do, manifests freedom from hate—cooperation without compromising convictions. To do otherwise is to abash the American credo.

Best wishes now and ever,

Sincerely yours,

MARCUS A. GALLAHER.

A Message the Kremlin Will Understand

EXTENSION OF REMARKS

OF

HON. ED EDMONDSON

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 10, 1957

Mr. EDMONDSON. Mr. Speaker, I hope this Congress will soon give to the President and the world a resolution asserting a firm and united position for our country in the troubled Middle East.

While we consider and debate the language of this resolution, however, let us hope we will also proceed without delay to prepare another message for the Kremlin and all other forces of the Communist conspiracy against free-

85TH CONGRESS
1ST SESSION

S. 921

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 1957

Mr. HENNINGS introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

85TH CONGRESS
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By Mr. HENNINGS

JANUARY 29, 1957

Read twice and referred to the Committee on Government Operations

homes of their own today, and our population is increasing by leaps and bounds. I think everyone would agree that the overwhelming majority of those who have not been able to purchase their own homes would be in the group most affected by this bill. I am sure I need not recite the many ways our people and Nation would benefit by home ownership.

I agree wholeheartedly with the opinion expressed by my distinguished colleague the Senator from Alabama [Mr. SPARKMAN], in that the Nation would be "courting disaster" if the volume of new housing units falls below the 1 million mark this year; but I further say that the most urgent needs for the majority of new housing are for those in the average and low-income brackets.

I should like further to point out that nine-tenths of the decline in housing last year was in these brackets.

Let us look briefly at a few reasons why our home-building industry is related to our national economy. Latest reports available give these statistics which I wish to impress upon the Senate today:

One out of every 10 nonfarm wage earner owes his or her livelihood to the building industry.

This industry consumes a third of America's 40 billion board-feet of lumber produced.

It uses 63 percent of our 5.9 billion clay bricks produced.

It uses 73 percent of our 700,000 tons of cast-iron soil pipe.

It uses a third of the 850,000 tons of wire nails and staples.

I could go on and on relating different allied industries that are directly affected by the building industry which are very vital to our national economy; however, suffice it to say that of the $44.3 billion spent last year on construction, $13.5 billion went for new housing units.

This is proof that not only from a humanitarian standpoint but from a practical business standpoint this vital industry to our national economy must not be allowed to be stifled by inflationary interest rates, excessive discounting of mortgages, and lack of long-term mortgage money, as is now the case.

I repeat that we cannot allow the needs of a large segment of our people to be trampled upon by money interests engaged in a cold and ruthless fight for ever higher and higher profits, with no regard for the Nation's real housing needs.

I am well aware of the different guises that opposition to this bill will take. Some powerful special interests will go so far as to call it socialistic, but I am also aware that much similarly branded legislation has stood the test of time and proved its need and worth, such as social security. But, at least this is for housing Americans and not some distant foreign people. Then there will be others who will cry out, "Keep Government out of business!" To those I would answer, the cause and reason for a bill of this nature are to be found in the fact that private capital has either been unwilling or unable to sustain this much needed part of our economy.

No one would rather see private capital do this job and fill this great vacuum of need that exists than I; nor would this bill in any way preclude private capital from doing the job. However, the record speaks for all to see.

Only this month when the question was asked at a meeting of the Mortgage Bankers Association of America in Chicago: "Would tight money as we know it today pinch off the postwar housing programs?" This answer was given by the president of the association: "We will have to live with conditions as they are now, and as they are likely to be, for some time." In that answer I can find no hope that private capital will or could do the job so urgently needed at this time.

I, for one, do not propose that we sit idly by and allow this need to grow larger and larger because of spiraling interest rates, excessive discounting of Government mortgages, and lack of long-term mortgage money, so that private capital can make more and more money at the expense of the people who need help the most.

I think all of us would commend the Federal Housing Authority and Veterans' Administration programs that have enabled so many of our people to acquire homes who otherwise would not have been able to do so, and I, for one, believe their work has only begun. However, if the only solution as offered to this date for those Departments to continue to function effectively is for the interest rates to be increased so as to compete with private lending institutions, disregarding the added protection of a United States Government guaranty, then I agree again with Senator SPARKMAN in saying "It would appear to suggest that both the FHA and the VA housing programs have outlived their usefulness and are no longer needed."

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 912) to enlarge the special assistance functions of the Federal National Mortgage Association to include the purchase and the making of commitments to purchase of insured or guaranteed mortgages securing loans not exceeding $14,000 in principal amount which bear interest at a rate not in excess of 4½ percent, introduced by Mr. JOHNSTON of South Carolina, was received, read twice by its title, and referred to the Committee on Banking and Currency.

DEDUCTION, FOR INCOME TAX PURPOSES, OF CERTAIN POLITICAL CONTRIBUTIONS

Mr. HENNINGS. Mr. President: I introduce, for appropriate reference, a bill to allow individuals to deduct for Federal income tax purposes not to exceed $100 each year of political contributions made to candidates for elective Federal offices. Earlier in this session, on January 9, I introduced a bill, S. 426, to revise the Federal election laws. S. 426, if enacted, will do a great deal to elevate the status of politics as an honorable profession, but it will not correct all the evils which exist in the Federal elections system. What we need is to broaden the base of political participation in this country, and the bill which I am introducing today is designed to do this by encouraging greater financial participation by the ordinary citizen. I ask unanimous consent that the bill may be printed in the RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 920) to allow individuals to deduct for Federal income tax purposes not to exceed $100 of political contributions made each year to candidates for elective Federal offices, introduced by Mr. HENNINGS, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

Be it enacted, etc., That (a) part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by renumbering section 217 as 218, and by inserting after section 216 the following new section:

"SEC. 217. Contributions to candidates for elective Federal office.

"(a) Allowance of deduction: In the case of an individual, there shall be allowed as a deduction any political contribution (as defined in subsection (c)) payment of which is made within the taxable year. A political contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

"(b) Limitation: The deduction under subsection (a) shall not exceed $100 for any taxable year.

"(c) Definition of political contribution: For purposes of this section, the term 'political contribution' means a contribution or gift to—

"(1) an individual whose name is presented for election as President of the United States, Vice President of the United States, an elector for President or Vice President of the United States, a Member of the Senate, or a Member of the House of Representatives (including a Delegate to the House of Representatives) in a general or special election, in a primary election, or in a convention of a political party, for use by such individual to further his candidacy for any such office; or

"(2) a committee acting in behalf of one or more individuals described in paragraph (1), for use by such committee to further the candidacy of such individual or individuals."

(b) The table of sections to part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 is amended by striking out

"SEC. 217. Cross references."

and inserting in lieu thereof

"SEC. 217. Contributions to candidates for elective Federal office.

"SEC. 218. Cross references."

SEC. 2. The amendments made by this Act shall apply only to taxable years ending on or after the date of the enactment of this Act, but only with respect to contributions or gifts made on or after such date.

AMENDMENT OF REVISED STATUTES, RELATIVE TO WITHHOLDING INFORMATION AND AVAILABILITY OF RECORDS

Mr. HENNINGS. Mr. President, I introduce, for apropriate reference, a bill to recognize the public's right to information and to strengthen the free speech and press guarantees of the first amendment.

This bill proposes to amend section 22 of title 5 of the United States Code so that it will be clear that the authority given to the head of each Federal department to prescribe regulations for the custody, use and preservation of departmental records and papers does not include authority to withhold information from the public. Specifically, the bill would add the following language to section 22: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The need for this amendment has been amply demonstrated during the past year in studies made by the Senate Judiciary Subcommittee on Constitutional Rights, of which I have the privilege of being chairman.

It has been shown that in recent years both the public and Congress have suffered time after time from arbitrary secrecy rulings by executive departments and agencies. In many cases, the section of the code now proposed to be amended has been cited by departments and agencies to justify withholding information to which the people clearly have been entitled and which has been necessary for the full protection and effective exercise of their constitutional rights.

This proposed legislation will not interfere with the proper classification of military secrets, nor will it jeopardize defense security in any way. Its effect will be to force the departments and agencies to rely on other statutory warrant, or Presidential directives of indisputable constitutionality, when they seek to keep information from either the public or Congress.

No longer should Federal officials be permitted to read authority to act as censors into what originally was intended to be merely a housekeeping statute.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, introduced by Mr. HENNINGS, was received, read twice by its title, and referred to the Committee on Government Operations.

COMMISSION ON THE PRESIDENCY AND VICE PRESIDENCY

Mr. PAYNE. Mr. President, I introduce, for appropriate reference, a bill to establish a Commission on the Presidency and Vice Presidency of the United States. The purpose of the Commission would be to study three recurrent questions relating to the Presidency and Vice Presidency: (1) the procedures to be followed in the event of the inability of a President to perform the powers and duties of his office; (2) the Electoral College method of selecting the President and Vice President; and (3) the role of the Vice President in the Federal Government.

I ask unanimous consent that a statement I have prepared concerning the bill, the text of the bill itself, and three editorials from the Washington Post and Times Herald dealing with these questions may be printed at this point in the CONGRESSIONAL RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill, statement, and editorials will be printed in the RECORD.

The bill (S. 924) to establish a Commission on the Presidency and Vice Presidency of the United States, introduced by Mr. PAYNE, was received, read twice by its title, referred to the Committee on Rules and Administration, and ordered to be printed in the RECORD, as follows:

Be it enacted, etc.,

DECLARATION OF PURPOSE

SECTION 1. The Congress finds that doubts have arisen with respect to certain aspects of the Presidency and Vice Presidency of the United States. It is the purpose of this act to provide for a thorough study and investigation of the possibility of resolving those doubts by—

(1) providing procedures to be followed in the event of the disability of the President so that the powers and duties of the Office will devolve upon the Vice President;

(2) clarifying the role of the Vice President in the conduct of the Government; and

(3) providing for a method of electing the President and Vice President in a manner that will better meet the needs of the people of the United States and the constitutional form of the Federal Government.

ESTABLISHMENT OF THE COMMISSION ON THE PRESIDENCY AND THE VICE PRESIDENCY OF THE UNITED STATES

SEC. 2. (a) To carry out the purposes of this act, there is hereby established a commission to be known as the Commission on the Presidency and Vice Presidency of the United States (in this act referred to as the "Commission").

(b) Service of an individual as a member of the Commission or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of section 281, 283, 284, 434, or 1914 of title 18 of the United States Code, or section 190 of the Revised Statutes (5 U. S. C. 99).

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) Number and Appointment.—The Commission shall be composed of 12 members as follows:

(1) Four appointed by the President of the United States;

(2) Four appointed by the President of the Senate, two from the Senate and two from private life; and

(3) Four appointed by the Speaker of the House of Representatives, two from the House of Representatives and two from private life.

(b) Vacancies: Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 4. The Commission shall elect a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 5. Seven members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 6. (a) Members of Congress: Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Members from the executive branch: Members of the Commission who are in the executive branch of the Government shall serve without compensation in addition to that received for their services in the executive branch, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(c) Members from private life: The members from private life shall each receive $50 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

STAFF OF THE COMMISSION

SEC. 7. (a) The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of the civil service laws and the Classification Act of 1949, as amended.

(b) The Commission may procure, without regard to the civil-service laws and the classification laws, temporary and intermittent services to the same extent as is authorized for the departments by section 15 of the act of August 2, 1946 (60 Stat. 810), but at rates not to exceed $50 per diem for individuals.

EXPENSES OF THE COMMISSION

SEC. 8. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this act.

DUTIES OF THE COMMISSION

SEC. 9. (a) Investigation: The Commission shall study and consider the constitutional and practical problems involved in the event of the disability of the President and the devolving of the powers and duties of the office of President upon the Vice President; shall study and consider the role of the Vice President in discharging the functions of the Government; shall study and investigate the present system of electing the President and Vice President; and in each instance shall make recommendations in accordance with the purposes set forth in section 1 of this act.

(b) Report: The Commission shall submit interim reports at such time, or times, as the Commission deems necessary and shall submit a comprehensive final report of its activities and the results of its studies to the Congress on or before , at which time the Commission shall cease to exist. The final report of the Commission may propose such constitutional amendments, legislative enactments, and administrative actions as in its judgment are necessary to carry out its recommendations. Notwithstanding the foregoing provisions of this subsection, the Chairman of the Commission shall have charge of the final liquidation of the affairs of the Commission after , including the printing of reports, the payment of bills, the transfer of records and documents to the National Archives, and the disposition of furniture and other equipment of the Commission. The Chairman of the Commission shall designate such members of the staff of the Commission as he deems necessary for these purposes. Such liquidation shall be completed within a period of not to exceed 90 days after , and the funds of the Commission shall remain available for necessary expenses during such period.

situation. pp. 2086-7

Sen. Humphrey gave his objections to the Special United Nations Fund for Economic Development. pp. 2131-3

11. PERSONNEL. Both Houses received from the Civil Service Commission a proposed bill to authorize the training of Federal employees at public or private facilities; to Post Office and Civil Service Committees. pp. 2088, 2164

Received the 1955 report of the Board of Actuaries of the Civil Service Retirement and Disability Fund (S. Doc. 30). p. 2092

12. BUILDINGS. Sen. Humphrey referred to the announcement that the lease-purchase program was being suspended as an anti-inflation measure, and said the real reason for suspending the program was that it did not work. p. 2131

13. FORESTRY. Received memorials from the Colo. Legislature favoring appropriations to pay the States amounts of forest receipts "illegally withheld" and to increase from 25% to 75% the share of forest receipts to be turned over to the States in certain situations. p. 2088

Sen. Wiley spoke in favor of establishing a Federal forest experiment station in southwestern Wis. pp. 2103-4

14. STOCKPILING; SURPLUS COMMODITIES. Received a Mont. Legislature memorial favoring the stockpiling of agricultural surpluses for national defense. p. 2088

15. WHEAT ALLOTMENTS; RESEARCH. Received a Mont. Legislature memorial favoring the exemption of experimental varieties from wheat allotments. pp. 2088-9

16. RURAL LIBRARIES. Sen. Humphrey inserted and commended a resolution of the American Library Assn. favoring a larger budget for rural library assistance. p. 2089

17. SOIL CONSERVATION. Sen. Thurmond inserted a series of resolutions by the S. C. Assn. of Soil Conservation District Supervisors. pp. 2089-90

18. ORGANIZATION AND MANAGEMENT. The Government Operations Committee submitted a report on Hoover Commission recommendations and actions taken pursuant to these recommendations. (S. Rept. 95) p. 2090

19. INFORMATION. S. 921, to amend the law regarding authority of Federal officers and agencies to withhold information and limit the availability of records, was transferred from the Government Operations Committee to the Judiciary Committee. p. 2092

20. PRICE INCREASES. Sen. O'Mahoney inserted and analyzed various statements regarding increases in the price of petroleum products and other items. pp. 2097-102

SENATE - FEBRUARY 22

21. FOREIGN AID. Continued debate on S. J. Res. 19, to promote peace and stability in the Middle East. pp. 2178-85

22. WATER RIGHTS. Received a Wyo. Legislature memorial favoring restatement and enforcement of State water rights. p. 2168

23. ORGANIZATION AND MANAGEMENT. The Government Operations Committee submitted a report on its activities (S. Rept. 96). p. 2170

24. ADJOURNED until Mon., Feb. 25. pp. 2185-6

HOUSE - FEBRUARY 22

25. INFORMATION. The Government Operations Committee submitted its second report on availability of information from Federal departments and agencies (H. Rept. 157). p. 2192

26. LEGISLATIVE PROGRAM. Majority Leader McCormack announced that H. R. 5189, the Interior and related agencies (including Forest Service) appropriation bill, will be debated beginning Tues., Feb. 26. p. 2191

27. ADJOURNED until Mon., Feb. 25. p. 2191

SENATE - FEBRUARY 20 (CONTINUED)

28. FOREIGN AID. Agreed to, without amendment, S. Res. 99, to extend from Feb. 28 to Mar. 31, 1957, the date for investigation of technical assistance and related programs. p. 2026

Continued debate on S. J. Res. 19, which authorizes the President to use $200 million, from foreign aid funds, to promote peace and stability in the Middle East. pp. 2024, 2026-7, 2030-8, 2040-1, 2044-5

Sen. Ellender reviewed his position regarding foreign aid, in view of statements made by the New York Times. pp. 2024-6

29. FARMERS' UNION. Sen. Mansfield welcomed the Mont. Farmers' Union Caravan. p. 2044

30. WATERSHED. The Agriculture and Forestry Committee approved the Little Youghiogheny River watershed project, Garrett County, Md. p. D111

BILLS INTRODUCED

31. PROPERTY. S. 1318, by Sen. Mansfield (for himself and Sen. Murray), to provide that certain surplus U. S. property may be donated for park and recreational purposes. To Government Operations Committee. Remarks of author. p. 2091

32. MONOPOLIES. H. R. 5190, by Rep. Teller, to limit and reduce the size of certa business organizations. To Judiciary Committee.

33. WHEAT QUOTAS. H. R. 5191, by Rep. Anderson, Mont., to amend the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938. To Agriculture Committee.

34. FOREIGN TRADE. H. R. 5202, by Rep. Jenkins, to amend the Antidumping Act. To Ways and Means Committee.

35. FARM INCOME. H. R. 5204, by Rep. Knutson, to provide for family farm parity income. To Agriculture Committee.

H. J. Res. 248, by Rep. Anderson, Mont., establishing a joint committee to investigate the cost of living and the widening spread between retail prices and prices paid to farmers. To Rules Committee. Remarks of author. p. A1400

36. DEPRESSED AREAS. H. R. 5205, by Rep. Machrowicz, to alleviate conditions of unemployment in certain economically depressed areas. To Banking and Currency Committee.

37. BUDGET. H. J. Res. 246, by Rep. Haley, requesting the President to submit to

85TH CONGRESS
1ST SESSION

S. 921

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 1957

Mr. HENNINGS introduced the following bill; which was read twice and referred to the Committee on Government Operations

FEBRUARY 21, 1957

The Committee on Government Operations discharged, and referred to the Committee on the Judiciary

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

85TH CONGRESS
1ST SESSION

S. 921

A BILL

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Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued March 6, 1958
For actions of March 5, 1958
85th-2d, No. 35

CONTENTS

HIGHLIGHTS: Senate committee ordered reported bill to extend Public Law 480. House debated accrued expenditures budgeting bill. House committee ordered reported bill to regulate withholding of information by agencies. Rep. Anfuso introduced and discussed food stamp plan bill. Rep. Judd inserted Secretary's Minneapolis speech.

HOUSE

1. BUDGETING. Began debate on H. R. 8002, to provide for budgeting on an accrued expenditure basis. (pp. 3022-54) Amendments to the bill will be considered today, Mar. 6.

2. INFORMATION. The Government Operations Committee ordered reported H. R. 2767, to prevent Federal agencies from withholding information or limiting the availability of records to the public. p. D177

Received the report of the U. S. Advisory Commission on Information (H. Doc. 348). p. 3067

3. EXPORT CONTROL. The Banking and Currency Committee ordered reported H. R. 10127, to extend for an additional 2 years the authority to regulate exports contained in the Export Control Act. p. D177

4. WATER UTILIZATION. The Interior and Insular Affairs Committee ordered reported S. 2037, to authorize the performance of necessary protection work between the Yuma project and Boulder Dam, and S. 1031, with amendment, to construct and maintain four units of the Greater Wenatchee project, Wash. p. D177

5. ANNUAL LEAVE. A subcommittee of the Post Office and Civil Service Committee ordered reported with amendment H. R. 7710, to provide for the lump-sum payment of all accumulated and current accrued annual leave of deceased employees. p. D177

6. TRADE AGREEMENTS. Rep. Lankford spoke in favor of extension of the reciprocal trade program, and cited the benefits of the program to certain industries. p. 3054

7. FOREIGN AFFAIRS. Received from the President the second report pursuant to the Joint Resolution to Promote Peace and Stability in the Middle East (H. Doc. 349). pp. 3020-21

SENATE

8. FOREIGN TRADE; SURPLUS COMMODITIES. The "Daily Digest" states that the Agriculture and Forestry Committee "ordered favorably reported an original bill extending the Agricultural Trade Development and Assistance Act for two years, authorizing $1.5 billion in each of the next two fiscal years, and $500 million for fiscal 1958. Committee also extended title II of this act for two years, and adopted an amendment directing an increased barter program." p. D175

9. SECOND SUPPLEMENTAL APPROPRIATION BILL, 1958. At the end of this Digest is a table showing actions on USDA items by the Senate committee in reporting this bill (see Digest 34). The Senate committee report contains the following comments:

GENERAL STATEMENT

"The committee has noted that many of the items for salaries and expenses for which funds have been provided in this bill have been justified on the basis of action by the Civil Service Commission in increasing or revising minimum rates under which qualified eligibles can be recruited for scientist and engineer positions. In many of these instances it appears that funds have already been allocated for such purpose, and the supplemental requests are made in order to continue such increased salaries.

"While the authority for the Commission, as contained in section 803 of the Classification Act of 1949, as amended by Public Law 763 of the 83rd Congress, states that such actions or revisions shall have the force and effect of law, the committee believes that such increased rates should not become effective until funds are specifically requested and approved by the Congress for that purpose." (This statement does not apply to any of the USDA items in this bill.)

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

Research

"The committee recommends an additional amount under this head, of $12,500 to begin urgently needed Federal research on pear decline, which disease has caused large losses to pear production in recent years, in the Pacific Northwest.

Wigglesworth amendment was then agreed to by vote of 152 to 103. The Taber amendment would have retained the present obligational system of budgeting with certain modifications. Rep. Wigglesworth stated that his substitute amendment, which became the language of the bill as passed, was designed to do three things as follows:

"In the first place it eliminates completely from the picture the proposal in H. R. 8002, that as far as obligations are concerned, we go back to the practice of contract authority which we abandoned some years ago as unsatisfactory.

"In the second place, it accepts the balance of the proposal putting the Congress in a position, if it so desires, to place an annual limitation on expenditures in terms of accrued expenditure.

"In the third place, it incorporates language to carry into effect the proposal just made by the distinguished gentleman from New York (Mr. Taber), which in effect waives points of order against rescissions, transfers, or reappropriations."

A motion by Rep. Smith, Va., to strike out the enacting clause, was rejected by a vote of 93 to 145. pp. 3182-83

A motion by Rep. Ford to recommit the bill to the Government Operations Committee was rejected by a vote of 119 to 275. p. 3185

16. DAIRY PRICE SUPPORTS. The "Daily Digest" states that the Dairy Products Subcommittee of the Agriculture Committee ordered reported the following bills: "H. R. 11176 (amended) and H. R. 11178, to amend the Agricultural Act of 1949 and of 1954, respectively, with respect to price supports for milk and special dairy programs; and H. R. 9650, to provide minimum price support levels for whole milk and butterfat during the 2-year period beginning April 1, 1958." p. D185

17. ROADS. The Public Works Committee reported with amendment H. R. 9821, to authorize appropriations for the continuing construction of highways, including forest highways, roads and trails (H. Rept. 1480). p. 3212

18. INFORMATION. The Government Operations Committee reported without amendment H. R. 2767, to restrict the authority of Federal officers and agencies to withhold information and limit the availability of records (H. Rept. 1461). p. 3212

19. COMMITTEE ASSIGNMENTS. Rep. Quie was elected a member of the Agriculture Committee. p. 3171

20. FOOD ADDITIVES. Rep. Sullivan urged additional funds for the Food and Drug Administration for expanded work on the use of chemical additives in food, and inserted several articles on the matter. pp. 3190-96

21. FOREIGN TRADE. Rep. Collier spoke in opposition to extending the reciprocal trade program. pp. 3201-02

22. EGGS. Rep. Knutson urged the Congress to place a "floor" and a "ceiling" on the price of eggs. p. 3211

public works and defense projects. pp. 3072-5, 3129-56, 3160, 3161-4. Sen. Mansfield urged extension of the Wool Act and wheat price supports at no less than $2 a bushel to aid ranchers (p. 3075). Sen. Murray inserted a letter from Pres. Patton of the Farmers' Union urging that his recommendations, including "immediate reversal of the Benson-Eisenhower farm policies" be carried out, and charged that "The deliberately planned deflation of agriculture has become an unplanned deflation of the whole economy." (pp. 3130-1). Sen. Humphrey stated that farm operators' net income was falling and criticized the Secretary for proposing to reduce price supports (p. 3147). Sen. Humphrey criticized reduction in the 1959 budget for agriculture price supports, soil and water conservation, rural electrification, and FHA loans (p. 3149).

Sen. Humphrey inserted a resolution of a Minn. Farmers' Union local urging Congress to restore farm prices to a "full parity level." p. 3076

6. PURCHASING. At the request of Sen. Talmadge, S. 5, to prevent the allocation of Government contracts to areas designated labor-surplus or depressed areas, passed over, p. 3118

7. MONOPOLY. Received from the Judiciary Committee a report, "Acitivites of the Subcommittee on Antitrust and Monopoly--1957" (S. Rept. 1345). p. 3077

8. WATER RESOURCES. Concurred in the House amendments to S. 1086, granting the consent of Congress to a Bear River compact between Idaho, Utah, and Wyoming. This bill will now be sent to the President. pp. 3091-2

9. FAIR TRADE. Sen. Humphrey urged a study of the fair-trade laws, which he asserted were being set aside in many areas. p. 3100

10. PUBLIC WORKS. Sens. Murray, Potter, Yarborough, Long, Malone, and Thye commended Sen. Ellender for his speech in rebuttal to a Saturday Evening Post article on public works programs. pp. 3112-13, 3156

11. ELECTRIFICATION; RECLAMATION. Sen. Morse inserted a speech by the President of the Nat'l Hells Canyon Ass'n urging that the Federal Government acquire Brownlee dam and build a high dam in Hells Canyon and contending that this would be profitable for both the Government and the Idaho Power Co. pp. 3156-7

12. INFORMATION. Received from the U. S. Advisory Commission on Information an annual report for 1957 (p. 3075), which was commended by Sens. Mundt, Humphrey, and Smith of N. J., and inserted in the record (pp. 3092-9).

13. LEGISLATIVE PROGRAM. Sen. Johnson announced the intention to consider the second supplemental appropriation bill Mon., March 10, followed by consideration of the housing bill. He hoped the Public Works committee would report a road bill by March 15, followed by a public works measure.

14. ADJOURNED until Mon., March 10. p. 3164

HOUSE

15. BUDGETING. Passed with amendment, by a vote of 311 to 87, H. R. 8002, to provide for budgeting on an accrued expenditure basis. pp. 3173-86, 3188
Agreed to a substitute amendment by Rep. Wigglesworth, as an amendment to a substitute amendment which had been offered by Rep. Taber, by a vote of 152 to 113. The Taber amendment as amended by the substitute language of the

85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1461

AMENDING SECTION 161 OF THE REVISED STATUTES WITH RESPECT TO THE AUTHORITY OF FEDERAL OFFICERS AND AGENCIES TO WITHHOLD INFORMATION AND LIMIT THE AVAILABILITY OF RECORDS

MARCH 6, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAWSON of Illinois, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H. R. 2767]

The Committee on Government Operations to whom was referred the bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

This bill would return section 22 of title 5 of the United States Code to what appears to have been the original purpose for which it was enacted in 1789. The statute was codified in 1875 as section 161 of the Revised Statutes. Shortly thereafter the first evidence appeared of use of the law to withhold information from the public.

The law has been called an office "housekeeping" statute, enacted to help General Washington get his administration underway by spelling out the authority for executive officials to set up offices and file Government documents. The documents involved are papers pertaining to the day-to-day business of Government which are not restricted under other specific laws nor classified as military information or secrets of state.

The first apparent use of the statute to deny information occurred in 1877 when a California newspaperman wanted to look at files of recommendations for Federal jobs to see who had been sponsored under the spoils system by officials from his State. The Department of Justice advised President Hayes that Department heads should not open their

20006—58——1

files to the reporter under the authority of title 5, United States Code, section 22.

The statute has been cited as authority to refuse information many other times since then—for example, in litigation involving the Secretary of Commerce and Labor in 1905 (25 Op. Att. Gen. 326) and involving the Secretary of the Army in 1951 (*Barclay* v. *U. S.*, hearings, p. 2629–2643). In recent years, as the drive for free access to Government records has intensified, title 5, United States Code, section 22, has been cited more regularly (see below).

When Congress has determined that a specific area of information must be closed to the public, legislation has been enacted accomplishing this purpose. The laws are legion which limit the public's right to know—income-tax laws, for example, and those covering crop reports, trade secrets, inventions, and military matters.

Where Congress has not acted, the executive officials have gradually moved in over the years. The "housekeeping" statute (5 U. S. C. 22) has become a convenient blanket to hide anything Congress may have neglected or refused to include under specific secrecy laws.

A parade of expert witnesses, whose testimony covers more than 500 pages of printed hearings, testified that title 5, United States Code, section 22, has been twisted from its original purpose as a "housekeeping" statute into a claim of authority to keep information from the public and, even, from the Congress. As one witness stated:

> There was no historymaking debate over title 5, United States Code, section 22, because it was not a historymaking statute, it was not a historymaking bill, it was not a historymaking proposal. If it had proposed secrecy it would have been historymaking. But it didn't. It was just a housekeeping statute, and as such raised none of the great issues that would have aroused Madison, Jefferson, Mason, and the rest of the statesmen who put so much trust in popular rights to information (hearings, Special Subcommittee on Government Information, p. 3359).

And again:

> If secrecy and concealment were the object sought by the statute, that object certainly could have been made clear and unmistakable by draftsmen who customarily said what they meant and meant what they said. A single phrase would have done the trick. The legislators of 1789 could have inserted, following the words "custody, use and preservation," some such plain word as "and concealment." They did not do so. We are justified in assuming that they did not do so because they did not intend to authorize concealment (hearings, p. 3357).

But concealment has been the result of the application of title 5, United States Code, section 22, to an area where Congress has neglected to act over the years, while executive officials have let every file clerk become a censor.

The purpose of this bill is to correct that situation.

BACKGROUND

This bill is identical to legislation introduced by Congressmen William L. Dawson of Illinois, Dante B. Fascell of Florida, Abraham J. Multer of New York, and Jim Wright of Texas. It is similar to legislation introduced by Congressman Clare Hoffman of Michigan. Congressmen Fascell and Hoffman served as regular members and Congressman Dawson served as ex officio member of the subcommittee which developed the legislation.

Title 5 of section 22 of the United States Code reads:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it (Rev. Stat. 161).

The bill would add the following sentence:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

CLAIMS OF AUTHORITY TO RESTRICT

In November 1955 the Committee on Government Operations published a committee print containing the answers from 60 Federal departments and agencies to a questionnaire which had been distributed by the Special Subcommittee on Government Information to determine the availability of information. One of the questions asked was:

> On what do you base authority for denying access to or not making available such information?

Authorities cited by eight executive departments (Agriculture, Commerce, Defense, Interior, Justice, Labor, Post Office, and State) included title 5, United States Code, section 22, the so-called housekeeping statute. In addition, four independent agencies (Civil Service, Housing and Home Finance, Interstate Commerce Commission, and Smithsonian Institution) cited the same statute (H. Rept. 2947, July 27, 1956, 84th Cong., 2d sess., p. 281).

On November 7, 1955, the Special Subcommittee on Government Information heard testimony from a panel of newsmen, editors, and others, including Dr. Harold L. Cross, freedom of information counsel for the American Society of Newspaper Editors. Dr. Cross, author of the book, The People's Right to Know, testified:

> This "housekeeping" statute, destitute as it is of all vestige of definitions and standards, is susceptible of being tortured, and has been tortured, with judicial sanction, it must be admitted, into a claim of privilege against disclosure and inspection so all-encompassing that it may fairly be said that there is no hope of obtaining inspection of a public record not specifically opened by Congress except through the courtesy of the Government (hearings, p. 12).

CONFUSED INTERPRETATION

On November 8, 1955, Civil Service Commission witnesses, testifying before the subcommittee, were asked:

> In the use of those three terms, the custody, use, and preservation, is that why you cited title 5, United States Code, section 22, as one of the grounds for withholding information?
>
> Answer. No; the reason we cited that was this: I think you find there have been cases in court which speak of documents as a part of the custody, and under that authority they have the right to withhold information. I think that the expansion of title 5, United States Code, section 22, by court decisions would read into it the right to deny information.
>
> Question. You do not read this section, then, as a straight custodial or housekeeping statute?
>
> Answer. No; I do not.
>
> Question. You think it gives you fairly wide powers to withhold information?
>
> Answer. I think so, by interpretation of the law under it (hearings, p. 141).

The subcommittee then asked whether the Civil Service Commission is a department within the meaning of title 5, United States Code, section 22, and the following answer was received:

> During the hearing hereinbefore mentioned, the opinion was expressed that there were decisions of the Supreme Court which would support a construction of the word "department," as used under Revised Statutes section 161 (5 U. S. C. A. 22), to include the Civil Service Commission. The decisions thus alluded to are *Emergency Fleet Corporation* v. *Western Union* (275 U. S. 415) and *United States* v. *Germaine* (99 U. S. 508).
>
> Upon further examination of these decisions, it would not appear that they can be invoked to support the informal opinion previously expressed at the hearing. Moreover, the enumeration of executive department under Revised Statutes section 158 would appear to preclude an expanded construction of the word "department" to include the Commission under Revised Statutes section 161. It is, therefore, concluded that question II must be answered in the negative (hearings, p. 141).

Thus, an agency guilty of misunderstanding, misinterpretation of court decisions and distortion of the statute was forced to review its position and admit its error, withdrawing its claim to title 5, United States Code, section 22, as a basic authority to withhold information from the public.

When Interstate Commerce Commission witnesses testified before the subcommittee in January 1956 relative to their citation of title 5, United States Code, section 22, the following answer was received:

> I am a bit embarrassed to take issue with the legal memorandum submitted [by the subcommittee] to the Commission

as to the applicability of section 22 of title 5 to interregulatory agencies, but that is a subject that has been discussed by lawyers within the Government for some years. I have heard lawyers argue that it is a matter of general congressional policy and that the Congress obviously intended each agency, whether a department or independent agency, to make all sorts of housekeeping rules for the general governing of its affairs.

But strictly, you could make a very good argument that section 5 applies only to Cabinet agencies. I think the Commission is safer in relying on the special rulemaking power that Congress has given it in the Interstate Commerce Commission Act (H. Rept. 2947, p. 45).

The final result is that the ICC withdrew its claim to use title 5, United States Code, section 22, as a basic authority to withhold information, as did other agencies below Cabinet level which originally cited the statute (H. Rept. 2947, p. 45).

The Agriculture Department demonstrated how the words in title 5, United States Code, section 22, have been misconstrued and misinterpreted in the following testimony before the subcommittee:

Question. * * * under what clause in that statute (5 U. S. C. 22) do you claim the right to hold the minutes of advisory committees confidential?

Answer. Under the words "preservation of the records" (hearings, p. 258).

When asked to explain the "difference between custody of records and suppression of records," the Department of Agriculture replied:

* * * Custody is safekeeping, and suppression, I suppose, would be refusal to give them to anyone. We do not do that.

Question. Custody is housekeeping is it not? Preservation of records is not the same language you would use if you were setting up a statute for putting a confidential stamp upon records?

Answer. I think custody may be more than mere care (hearings, p. 259).

INTERTWINING WITH TITLE 5, UNITED STATES CODE, SECTION 1002

The housekeeping statute, title 5, United States Code, section 22, has been intertwined and misinterpreted with a 1946 statute, the Administrative Procedure Act (5 U. S. C. 1002) which is primarily a positive public information law. The Post Office Department gave the following testimony:

Question. You cited that (5 U. S. C. 22), as 1 of the 2 basic statutes which permit you to deny access to information. Do you consider besides those positive assertions, the promulgation of regulations and the conduct of officers and clerks, the fact that the phrase "the custody, use, and preservation of the records, papers, and property," includes the suppression of information?

Answer. That is my viewpoint, that we have the basic statute under the Administrative Procedure Act that we have

> already discussed, and it makes certain exceptions as to the matter of information. Then, I regard section 22 of title 5 as simply a statement authorizing the head of a department to make some reasonable regulations on the way information is made available, and that you construe the two together. In other words, we have section 1002 of title 5, this general statute; then the Postmaster General acting on the statute you have just cited. Section 22 is the authority for the making of published regulations about giving out information. Now, we do not look upon it as a statute to restrict information, but it is a statute that will prescribe under what conditions inquirers may receive the information, and that statute has been sustained by the courts (hearings, p. 177).

The Treasury Department emphasized the intertwining of title 5, United States Code, section 22, and title 5, United States Code, section 1002, by Federal departments seeking legal authority to restrict information. The Department cited the "housekeeping" statute as authority to withhold facts on out-of-court settlement of fines for smuggling and other import-law violations, stating that such actions are confidential—

> under the authority of section 161 of the Revised Statutes (5 U. S. C. 22) and pursuant to section 3 of the Administrative Procedure Act (5 U. S. C. 1002) (H. Rept. 157, February 22, 1957, 85th Cong., 1st sess., p. 18).

Apparently, the only excuse for legal authority to restrict information which the executive departments had before 1946, when the Administrative Procedure Act was passed, was title 5, United States Code, section 22, standing alone.

OPINIONS OF NONGOVERNMENT LAWYERS

To help straighten out confusing testimony on title 5, United States Code, section 22, from both the executive departments and independent agencies, the subcommittee held a panel discussion with non-Government legal experts in May 1956. The following questions were asked:

> What is the proper interpretation of this statute (5 U. S. C. 22) with respect to access to records for public inspection? Is it merely a "housekeeping" statute which has nothing to do with withholding information? Does it specifically confer discretion to withhold information?

The following answers represent the point of view of the legal experts:

> As a matter of law, * * * it is a mere "housekeeping" statute sanctioning regulations, not inconsistent with law, for the use of records and papers. In fact, it is cited and applied as authority for withholding information * * * the statute says "custody, use, and preservation." It does not say "nonuse." It does not by its terms, or by necessary or reasonable implication, sanction withholding, secrecy, or suppression * * *.
>
> Departments and agencies differ from each other and among themselves in their interpretations of the laws. They

have promulgated hundreds of pages of regulations which both vary and conflict, though purporting to be based on the same set of statutes, court decisions, or Attorney General opinions. They vary in their interpretations, as well as in the application, of their own regulations, even when the language is alike. Some administrative agencies base regulations on statutes which are applicable by their express terms to executive departments only. Some executive departments do the same in reverse (hearings, p. 443).

* * * title 5, United States Code, section 22, does not really bear on the executive power to withhold information from the Congress. It merely gives department heads authority to regulate within their departments the way in which requests for information are to be dealt with—for example, by centralizing the authority to deal with such requests in the department head. Title 5, United States Code, section 22, is thus a "housekeeping" statute and not a delegation of authority for withholding information. This conclusion, as has been emphasized, is wholly consistent with the Supreme Court decisions on the subject (hearings, p. 458).

This statute was not * * * intended to confer any powers to withhold information from the public, or from appropriate congressional committees. Most assuredly there could be no argument here that Congress intended to deny information to itself * * *.

If Congress had meant to confer authority over disclosure, it could easily have said so (hearings, p. 544).

Impartial witnesses gave the subcommittee clear-cut statements that title 5, United States Code, section 22, was never intended, either by Congress or the courts, to be anything other than a "housekeeping" statute.

OPINIONS OF GOVERNMENT LAWYERS

After the subcommittee had obtained the opinions of the non-government legal experts, Chairman William L. Dawson of the House Committee on Government Operations suggested a panel discussion with Government lawyers. The subcommittee, in preparation for such a discussion on June 20 and 22, 1956, submitted to 16 General Counsels of Federal departments and agencies, a list of 43 questions pertaining to the authority to withhold Government information and records (hearings, pp. 2797 through 2891). One of the questions asked was:

> What amendment would you suggest as a means to overcome the interpretation of this statute (5 U. S. C. 22) as a basis for withholding information?

None of the Government legal experts offered any amending ideas; however, interesting comments received include:

Defense:

> We do not believe the statute applies to access by congressional committees. Further, the basic authority governing disclosure of information to either the public or congressional committees is constitutional. In any event, facilitating the flow of information is primarily a matter of good administra-

tion * * * we do not have an amendment to suggest (hearings, p. 2825).

Interior:

> In our opinion the statute authorizes reasonable regulations governing access * * * [which] * * * can be achieved by good administration, and adequate funds, rather than by legislation. If, however, this question implies that current restrictions on access should be amended, we believe title 5, United States Code, section 22, is sufficient to permit a reappraisal of such regulations concerning access to records (hearings, p. 2855).

Post Office:

> In view of our answer to question 1 to the effect that the basic authority to withhold information from Congress stems from constitutional principles rather than from statutory enactments, we do not believe amendment of section 22, of title 5 would facilitate Congress' "right to know." If it is felt that there is a need to speed up the process of providing information, we believe that the matter is one for better administration rather than legislation.
>
> With respect to the right of the public to know, we believe that Congress has already made law which has brought about wider dissemination of information to the public. That law is the Administrative Procedure Act (5 U. S. C. 1001, et seq.). This act directs the release of information with clearly stated exceptions. The exceptions are sound; should be retained; and it would be difficult to make them more specific * * *.
>
> * * * we would not propose specific amendments to this section (hearings, pp 2865–2866).

Treasury:

> It would appear that an amendment to title 5, United States Code, section 1002, would be more appropriate if Congress should choose to alter existing law as to disclosure. However, the primary authority in withholding information in the public interest rests upon constitutional rather than statutory authority (hearings, p. 2879).

Although the subcommittee sought advice and cooperation from the executive departments to clarify the misinterpretation and distortion of title 5, United States Code, section 22, no help was forthcoming. The agencies said, in effect, "it is an administrative problem—leave it to us." Even after incorrect citations of the statute by some independent agencies were brought to the attention of executive officials, they still refused to propose any amendment to return title 5, United States Code, section 22, to its original "housekeeping" status.

AGENCY COMMENTS

In October 1956 the subcommittee circulated the first draft of a proposed amendment to title 5, United States Code, section 22, among lawyers, editors, reporters, scientists, teachers, and the general public. The purpose and limited scope of the amendment received general approval. The result was the introduction, in January, 1957,

of H. R. 2767 and similar legislation to amend title 5, United States Code, section 22.

In January 1957 Chairman William L. Dawson requested comments on H. R. 2767 from executive agencies. The responses to Congressman Dawson's letter show startling similarities in certain respects (hearings, pp. 2572 through 2582). One comment was that the amendment would create uncertainty and confusion. The Department of Agriculture, for instance, commented that the statute, remaining unchanged since 1872, has through its "settled construction" in a number of Supreme Court cases, furnished a "clear basis for the operations of the executive departments." The Defense Department answered that the proposed amendments would "only create uncertainty" as to executive responsibilities in the secrecy area—an area which title 5, United States Code, section 22, does not cover.

The Department of Justice remarked that the proposed amendments "would not clarify the present law."

A common point in the answers to Congressman Dawson's request was the fear that the heads of departments would forfeit their power to direct subordinates to restrict information. For example, the Post Office Department replied:

> We believe it [the amendment] will prohibit the Postmaster General from instructing his employees that they may not release to the public certain information. * * *

Likewise, the Department of Labor replied:

> Regulations have been issued by department and agency heads restricting the functions of subordinates in relation to disseminating information. The proposed measures are objectionable in that they would appear to remove this authority. * * *

And the State Department replied that:

> * * * these bills would appear to be an attempt to limit the exercise of executive discretion which must continue to be vested in the heads of the various agencies. * * *

The Treasury Department combined two objections by opposing the amendment on the grounds that "* * * indiscriminate disclosure of information is manifestly not in the public interest" and that the amendments would "serve only to confuse the general public as to the law governing the availability of records."

The Department of the Interior filed less strenuous objections to the proposed amendment and recognized a "continuing responsibility for informing the public concerning the activities of [this] agency."

CLARIFICATION OF AGENCY COMMENTS

Because of the confusion exhibited in the answers to Chairman Dawson's letter, Congressman Moss sent letters to the 10 executive departments on June 27, 1957, asking 9 questions on the background and probable effect of the proposed amendment (hearings, pp. 2583 through 2602). One of the questions covered the effect of the proposed amendment on the department head's authority to issue rules governing the conduct of his employees. Another question asked whether each department had statutory authority other than title 5,

United States Code, section 22, to control the dissemination of information. Following is a tabulation of the answers to those two questions:

Does your Department and its constituent agencies have statutory authority, such as organic acts, etc., in addition to title 5, United States Code, section 22, to make "rules and regulations" for the conduct of its business?

Have other statutory authority: 8 departments (Commerce, Defense, HEW, Interior, Justice, Labor, Post Office, and State).
Do not have other statutory authority: 1 department (Treasury, except Coast Guard).
No answer: 1 department (Agriculture).

*Is it your opinion that the proposed amendments take away from the heads of a department or agency the grant of authority to prescribe rules and regulations * * * for the government of his department, the conduct of its officers and clerks?*

Amendment removes authority: 2 departments (Commerce, Justice)
Amendment does not remove authority: 3 departments (Defense, HEW, State)
May partially remove authority: 3 departments (Interior, Labor, Post Office)
Uncertain: 2 departments (Treasury, Agriculture)

Answers to the rest of the nine questions also clarified many of the areas about which the departments and their General Counsels had been unclear in answers to earlier letters or during hearings. Following is an analysis of the answers to the other questions in Congressman Moss' letter of June 27, 1957:

Exactly what rules and regulations within your Department would have to be amended or rescinded in the event the proposed amendments are enacted?

None need be changed: 5 departments (Defense, HEW, Post Office, State, Treasury)
Some changes required: 3 departments (Commerce, Labor, Interior)
Doubt any changes: 1 department (Justice)
No answer: 1 department (Agriculture)

What other specific changes, if any, would the proposed amendments bring about in the operation of your Department? Please explain in detail.

No other changes: 7 departments (Commerce, HEW, Labor, Post Office, State, Treasury, Interior)
Uncertain about other changes: 2 departments (Defense, Justice)
No answer: 1 department (Agriculture)

Please explain in detail how the following legal cases would be affected by these amendments: (a) Touhy v. *Ragen (340 U. S. 462); (b) Boske* v. *Comingore (177 U. S. 459).*

Neither case affected: 4 departments (Commerce, Defense, Justice, Post Office)
Uncertain of effect: 1 department (Treasury)
No answer: 5 departments (Agriculture, HEW, Interior, Labor, State)

To what extent, if any, would the proposed amendments change existing law with particular consideration being given to court decisions?

No affect on existing law: 2 departments (Defense, Treasury)
Affect administrative regulations: 2 departments (Commerce, Post Office)
Unsure of effect: 3 departments (Agriculture, Justice, State)
No answer: 3 departments (HEW, Interior, Labor)

Was the decision in U. S. v. *Reynolds (345 U. S. 1) based on section 161, Revised Statutes (5 U. S. C. 22), or on other grounds?*

Based on section 161: None
Other grounds: 6 departments (Commerce, Defense, Justice, Post Office, State, Treasury)
No answer: 4 departments (HEW, Interior, Labor, Agriculture)

Is there any constitutional question involved in the enactment of these amendments? If so, please explain in detail, citing the specific language in the Constitution.

No constitutional question: 3 departments (Defense, Justice, Treasury)
Affect executive powers: 2 departments (Commerce, Post Office)
No answer: 5 departments (HEW, Agriculture, Interior, Labor, State)

Please cite specifically what other statutes would be affected by these proposed amendments. Please explain in detail.

No others affected: 5 departments (Defense, HEW, Post Office, State, Treasury)
Unclear on effect: 2 departments (Commerce, Justice)
Would affect certain statutes: 1 department (Labor)
No answer: 2 departments (Interior, Agriculture)

In a further effort to get complete answers to the many important questions involved in the proposed amendment, hearings with all 10 executive departments were called for July 22, 1957. All departments except Post Office and Health, Education, and Welfare declined to send witnesses to the hearing, relying instead on their written answers which are analyzed above. Testimony at the hearing followed the lines of earlier departmental answers, with HEW admitting it was a new department which would not be affected by the amendment and Post Office agreeing to the amendment if there were clarification of the fact that the agency head would retain power to govern the "housekeeping" activities of his department (hearings, pp. 2539–2571).

PROPONENTS OF LEGISLATION

On February 6 and 7, 1958, supporters of the proposed amendments to title 5, United States Code, section 22, filed statements and testified at a subcommittee hearing. Many of the organizations supporting the amendment represent the press and range from the American Newspaper Publishers Association and the American Society of Newspaper Editors to regional and local newspaper groups. Other proponents include individuals who have been working for the people's right to know and organizations such as the American Civil Liberties Union and the American Bar Association (hearings, pp. 3323–3433).

Witnesses at the February hearings answered questions which Government experts had seemed unable to handle. The collo-

quies covered not only the effect of the legislation, but also the intent of the legislators.

Subcommittee members and witnesses supporting the amendment unanimously agreed that title 5, United States Code, section 22, originally was adopted in 1789 to provide for the day-to-day office housekeeping in the Government departments, but through misuse it has become twisted into a claim of authority to withhold information. As James Pope said, the proposed legislation "would only make amends for 170 years of neglect to make the intention of Congress plain" that title 5, United States Code, section 22, should not be used to restrict public access to Federal records (hearings, p. 3328).

Other witnesses pointed out that the legislation they support is a "very timid beginning" toward the goal of full Federal recognition of the people's right to know (hearings, p. 3360). However, J. R. Wiggins, representing the American Society of Newspaper Editors, stated that modest as the legislation may be—

> it is worth doing because the passage of this amendment will be a sign and a symbol of congressional purpose and intent, a mark and a monument of congressional recognition (hearings, p. 3360).

Witnesses and subcommittee members generally agreed that there are categories of information which should be withheld from the public. In every case where the withholding is not under a statute, however, the burden of proof that the restriction is necessary should fall upon the Federal official denying the information.

Some witnesses took sharp issue with executive department suggestions that inequitable restrictions on information should be disposed of "administratively." Clark Mollenhoff representing Sigma Delta Chi pointed out that Department of Justice officials recently had refused a request from his organization to draw up a list of administrative areas where information should be withheld. It would take, he added, "50 years to persuade, coax, prod and herd the various agencies" into volunteering not to use title 5, United States Code, section 22, to keep information from the public.

In a comprehensive legal memorandum (hearings, pp. 3393–3407). Dr. Harold L. Cross, freedom of information counsel of the American Society of Newspaper Editors and author of the book, The People's Right To Know, emphasized that the proposed amendment would not make title 5, United States Code, section 22, a public records law. Since the amendment merely removes the authority claimed under the statute to restrict information, it does not require the giving out of information.

Dr. Cross pointed up the fact that amendment would, once and for all, remove whatever authority existed, if any, under title 5, United States Code, section 22, for the heads of the 10 executive departments to withhold information without congressional sanction or judicial review. This, he said, is in line with a recent Presidential letter stating "the Government has a duty to keep the people informed on what it proposes to do and why" (hearings, p. 3411).

The application of this amendment is limited to Revised Statutes 161 (5 U. S. C. 22) and should not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting the availability of information or records to the public.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 161 OF THE REVISED STATUTES OF THE UNITED STATES
(5 U. S. C. 22)

SEC. 161. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. *This section does not authorize withholding information from the public or limiting the availability of records to the public.*

ADDITIONAL VIEWS OF HON. CLARE E. HOFFMAN

THE ISSUE

Shall the legislative branch of the Government invade the province of the executive branch? Has it that authority?

Stripped of all irrelevant testimony and argument, that is the fundamental issue and nothing can be gained by ignoring it. The attempt of the legislative branch to tell the executive branch how to perform its duties is carried in H. R. 2767, which seeks to amend legislation enacted in 1877 and which, since that time, has to some extent been relied upon by the executive departments in the classification and use of information coming into their possession.

Title IV, Revised Statutes of the United States, second edition, adopted in 1877, carried provisions which were applicable to the then existing seven executive departments [1] and undoubtedly now apply to all executive departments.[2]

Section 161 of that act (5 U. S. C. 22) provided that:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The executive departments and agencies and some of their employees have used section 161 to cover up their own shortcomings and to arbitrarily classify information as confidential, secret, or top-secret, when there appears to be no reason whatsoever for such a classification.

To end that improper arbitrary practice, H. R. 2767 proposed to add at the end of the section this language:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

This being the people's government, it is argued that every individual, as a matter of right, is entitled to any and all information, to examine any and all records which at any time may be in the possession of the departments.

If this amendment is adopted, the departments would no longer have any statutory justification for refusal to make available any information or record in their possession which might be requested and not specifically authorized to be withheld.

No suggestion is made as to how the method of classifying or declassifying information or records can be improved though it is well known that improper arbitrary classification lies at the bottom of much of the trouble. The real basic issue is whether the Congress, the legis-

[1] State, War, Treasury, Navy, Interior, Post Office, and Justice.
[2] State, Defense, Treasury, Justice, Post Office, Interior, Agriculture, Commerce, Labor, and Health Education, and Welfare (5 U. S. C. 1, 2).

lative department of the Government, will invade the province of the executive department, strike down the constitutional right of that department to exercise its constitutional authority, execute the laws which have been passed by the Congress.

What is now involved?

Inasmuch as the executive departments were created by the Congress under the legislative authority given it by the Constitution, it would seem that the Congress has authority to prescribe the jurisdiction of the departments, tell them how to exercise the power granted. That apparently is what the Congress tried to do in adopting title IV of the Revised Statutes of 1878. It would then apparently follow that the Congress has authority to change the course of action then prescribed, and that to a certain extent is undoubtedly true and is the purpose of H. R. 2767.

But the President and the departments have always contended that, inasmuch as the Executive power was, by the Constitution, vested in the President, the department heads being selected by the President and under his control, the authority implied by the grant of executive power to the President carries with it the implication that, as to vital fundamental principles involved in the exercise of the executive authority granted the President, he and the heads of the departments responsible to him have exclusive jurisdiction.

The argument that, inasmuch as this is the people's government, they therefore have an absolute right to "know all" is not sound, for the reason that the people themselves, through their representatives who wrote the Constitution which the people later adopted, authorized the creation of a government which was divided into three branches, each by the Constitution given an area of independent action. The people gave away part of that right to know when they adopted the Constitution—they can regain it only by amending the Constitution.

Beyond question, when the Congress later created executive departments and prescribed rules and regulations, while it has authority to formulate and prescribe what proponents of this bill call "housekeeping" methods, the legislative branch neither had, has, nor can it be given, authority to interfere with the basic principles under which the other two branches operate. (Does anyone contend that the courts created by the Congress can be required to explain or justify their decisions, the reasons therefor?—that jurors, officers of the courts, can be made to disclose their discussions?)

The executive departments derive their basic authority not from the legislative branch, but from the Constitution, which clearly states that the executive power is vested in the President. To put it a little differently, while the legislative branch may create departments and write laws, the authority to execute those laws rests with the President, and it is for the President or individuals selected by him to control the exercise of that power.

True, the Congress, in the exercise of its legislative authority, may create a department, prescribe its functions, but, if the legislation infringes on the authority given by article II, it is void.

If the people desire the right to "know all" their Government is thinking, saying, doing, and the reasons therefor, an amendment to the Constitution is the proper method of implementing that desire.

The question as to the right of the Congress to information from the executive department is not here involved, as will later appear.

The demand for the change comes, not from individual members of the public acting as such, but from the press.

To understand the implications carried in the proposed legislation, the principles on which our Government was founded and has successfully operated should be recalled.

Those who declared our independence, made it actual by winning an 8-year cruel war, knew by experience and from history that the natural tendency in every group is for the strong to rule—oppress the weak. They knew that the real purpose of government was to protect the weak from the strong, give equality of opportunity, bring about the greatest possible degree of prosperity and contentment for the individual, future security for the established government.

The past demonstrates that in every nation the tendency was for one individual to acquire absolute power and rule with an iron hand until his folly or that of the people destroyed the nation. This, with very few exceptions, was true, whether the man at the top was named king, czar, emperor, or dictator.

To safeguard until time should be no more the independence of the individual, the welfare of all and the security of the Republic, the Constitution and Bill of Rights were written and adopted.

So far as is known, no other people had ever conceived or adopted a system of government even similar to that established by the Constitution and our Bill of Rights.

Realizing that if the Nation was to be effective and endure, 13 separate State governments could not be permitted to act, each independently and perhaps at cross purposes, that there must be some centralization of authority, the Founding Fathers created the Federal government with only such powers as were specifically enumerated—all others being reserved to the people or to the States.

To prevent the centralization of power in 1 man, or in 1 group, the power to govern was divided:

(1) Authority to make the laws was placed in the hands of the people, acting through their Senators and Representatives.[3]

(2) To make certain the people's will enacted into law would be given effect, the executive power was vested in a President.[4]

(3) To interpret and harmonize the laws enacted by the people's representatives, the judicial power was vested in a "Supreme Court, and in such inferior courts as the Congress may * * * ordain and establish." [5]

(1) (a) To safeguard the rights of the States and the people, it was declared that each State, regardless of population or wealth, should have 2 Senators who should hold office for 6 years.

To make certain that the States with a lesser population should not, because of equality in the Senate, have undue power, it was provided that the number of Representatives from each State should be determined by the number of citizens therein.

Apparently, every available safeguard to preserve the lawmaking power in the people, to guard against outbursts of resentment, greed, or passion on the part of an emotionally aroused people, was adopted.

(2) (a) To avoid dictatorship by an individual, the tenure in office of the President was limited to 4 years—an opportunity provided the people to replace him at the end of that time.

[3] Constitution, art. I, sec. 1.
[4] Constitution, art. II, sec. 1.
[5] Constitution, art. III, sec. 1.

More recently the Congress,[6] perhaps fearing a dictatorship and at least realizing the necessity of creating a situation unfavorable to the establishment of a dictatorship, provided that a President should not succeed himself more than once.

(3) (a) To make certain that the judicial power vested in the Supreme Court would be independently exercised, the members thereof were selected by the President, subject to confirmation by the Senate, and continued to hold office during good behavior. It was further provided that their compensation should not be diminished during their continuance in office.[7]

The Court was not given legislative authority. Nor has it been given power to enforce its decrees except through its own officers. No better plan to avoid a tyrant's rule has yet been devised.

NEED FOR LIMITATIONS OF AUTHORITY

That those who established our Government were well aware that ambition, desire for power and wealth, were ever-present human characteristics, that checks were necessary, has been demonstrated by subsequent events.

Each of the three departments has made, continues to make, its own bid for additional authority at the expense of the others.

SUPREME COURT GRASPS LEGISLATIVE POWER

Until recent years the Supreme Court, and here reference is to the overall general tendency, contented itself with the exercise of the power granted it by the Constitution. That is, it sought the true meaning of the legislation enacted by the Congress; on occasion but rarely, if it thought legislation was in violation of constitutional provisions, declared it void.

Gradually, however, the Court seems to have become convinced that it had authority not only to define congressional intent as expressed by legislation but to substitute for congressional intent its own views as to what legislation should be. The Court has not only disregarded its own precedents, which, if there is to be legal certainty, continuity, and stability, must be observed, but has substituted for the will of the people, as expressed by legislation, the political philosophy of individual members of the Court; substituted for provisions of the Constitution and enactments of the Congress its own opinion not of what the law was or meant but what the Court thought it should be. Members of the Court have so stated.

Recent decisions which disregarded long-established principles and stare decisis, substituted the Court's own political philosophy, bring that conviction.

APPARENT LEGISLATIVE INVASION OF JUDICIAL POLICY

Critical of the interpretation given to legislation and of what it considered a clear usurpation of its legislative function, the Congress is becoming increasingly critical of comparatively recent decisions of the Supreme Court. Attention today is focused upon judicial decisions under which defendants with long criminal records and

[6] 22nd amendment to the Constitution.
[7] Constitution, art. 3, sec. 1.

admittedly guilty of the offense charged, have gone free, escaped further prosecution, because of the Court's intepretation of the Constitution, statutes, or court rules.

Many Members of the House agree with Justice Frankfurter,[8] who in a dissenting 4-to-5 decision, stated that the majority opinion "misconceives the purposes of the double jeopardy provision and without warrant from the Constitution makes an absolute of the interests of the accused in disregard of the interests of society."

LEGISLATIVE INVASION OF EXECUTIVE DEPARTMENT

H. R. 2767 is an obvious effort on the part of the Congress to compel the executive department to, regardless of results, "tell all" to each of 170 million citizens who may make a request for information or a look at the records in the possession of the executive department.

EXECUTIVE DEPARTMENT ASSUMES LEGISLATIVE AUTHORITY

Though the Constitution expressly grants exclusive legislative authority[9] to the Congress and prescribes[10] the procedure for the enactment of legislation, the executive department proposed and the Congress complacently agreed[11] to share its legislative authority with the executive department.

By propaganda, the administration in power has consistently and continuously, and through patronage, been exerting an ever-increasing force in shaping legislation.[12]

EXECUTIVE DEPARTMENTS DISCOURAGE THE LEGISLATIVE DEPARTMENT

The most recent attempt of the executive department to discourage the legislative department has been the unjustifiable, arbitrary refusal of the executive departments to give the Congress information necessary to aid it in writing needed helpful legislation.

ESTABLISHED PRACTICE

From 1796 when the House of Representatives requested that President Washington furnish certain information to the Congress, down to this day there has been a difference of opinion between the President and the executive departments, on the one hand, and the Congress, on the other, as to the information which the President and the executive department should give to the Congress on demand.

Many requests have been made and where they called for information as to how or why the Chief Executive administered the authority given him by the Constitution, they were consistently and properly denied, either by the President, acting on the advice given him by the Attorney General, or on his own volition.

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[8] *Green* v. *United States*, No. 16, October Term 1957.

[9] Constitution, art. 1, sec. 1.

[10] Constitution, art. 1, sec. 7.

[11] Act of April 3, 1939, 53 Stat. 461, pt. 2, vol. 539, Statutes, approved April 3, 1939:
Under the Constitution and long-established procedure, proposed legislation was first considered by the Congress, then went to the President for approval or disapproval. If disapproved, the Congress might still have its way provided a two-thirds majority vote could be obtained. Under the various Reorganization Acts, legislation may originate in the executive department and until disapproved (vetoed) by a prescribed number of the Members of Congress (the exact procedure varying from time to time) became the law of the land.

[12] Recent meeting at the White House; public dinners advocating support for foreign aid.

CONGRESSIONAL RIGHT TO INFORMATION TO ENABLE IT TO LEGISLATE—BUT NOT AS TO HOW OR WHY THE EXECUTIVE EXERCISES HIS AUTHORITY

The right of the Congress and its congressional committees to information and records in the possession of the executive departments, and which is necessary in order to enable it to legislate properly, has long been established, though sometimes questioned.

In an effort to clear the situation, House Joint Resolution 342 of the 80th Congress came before the House on May 12, 1948. That resolution was an attempt by legislation to require the executive department and the agencies of the Federal Government, which had been created by the Congress, and those serving in them, to make available to the Congress information which would enable it to pass on proposed legislation provided the request was made by a majority vote of the members of the committee seeking the information and had been approved by either the Speaker or the president pro tempore of the Senate. It also, because of certain protests, imposed a penalty upon any member who, after a majority of the committee receiving the information had declared it should be kept secret, publicized it. (Excerpt from H. Rept. 1595, pt. No. 2, H. J. Res. 342, 80th Cong., 2d sess., appears in appendix B.)

When that bill was considered by the House on May 12 and 13, 1948, it was on the latter date adopted by the House by a vote of 219 to 142 with 70 members not voting.

The principal opposition came from the then minority and was based upon the division of authority prescribed by the Constitution. The issue then before the House was the right of the Congress and its committees to information necessary to enable it to function. Its right as an integral branch of the Government. Involved here today is the right of the citizen to police those to whom he granted authority when the Constitution was written.

During the debate, among other things, the gentleman from Texas, Mr. Rayburn, said:

The argument then made, the reason then given for opposing the then pending bill, are not applicable to a request or demand by the legislative branch. They are convincing and conclusive when applied to the current situation—a demand by an individual for information.

> Mr. RAYBURN. Mr. Chairman, I have sat here all day and I have listened to a very interesting debate. The more debate I have listened to the more things come to my mind, as just expressed by the very able young gentleman from Missouri [Mr. Bakewell]. I have heard gentlemen express themselves on this floor today upon so many fundamental questions that I have agreed with in the years gone by. When I saw my old and very dear friend and my able friend, the gentleman from New York [Mr. Wadsworth], take the floor today, I felt certain he was going to resist the enactment of legislation of this kind and character.
>
> I do not know what you gentlemen think the powers of Congress are. Are they limitless? Is there no limit under the Constitution to which any Congress, much less a very partisan one, would go? Back in the formative period of this Government there was a great jurist. He is quoted by all of

us. Especially was he quoted by the Federalists in the early days of this Republic. In 1803 he gave forth this language in a very familiar case, which we lawyers all have heard something about. Sometimes when discussions like these come up I get just a little sorry that I ever studied law, because I would not have been so bothered about my vote on some of the issues raised. But Mr. Justice John Marshall used this language a long time ago:

"By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to the country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political: They respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive."

Pass this resolution. The President says to his Cabinet officer, "No, you are my agent, you are my alter ego; do not give that information to the Congress."

What are you going to do about it? You might have an unseemly session, an unseemly row upon the floor of the House of Representatives. What are you going to do about it? Are you going to impeach the President of the United States because he says the giving up of certain information is not in the public interest? Who is better qualified in matters of national defense—lay aside the State Department that the gentleman from New York says is not covered at all in this legislation—who is better qualified in matters of national defense and the safety of the country?

* * * * *

Who is better prepared? Who knows more about our foreign affairs? He knows better than any other man in Government—not you; not me. Who knows better what is necessary to bring an army and navy and an air force together to defend the country than the President of the United States? And in his wise discretion he makes recommendations to Congress.

My friend from New York said that for nearly 30 years he had been around here. I happen to have been around here 35 years, and I have said from his high place many times that the House of Representatives, next to family and friends, is my life and it is my love; and I do and I shall deeply regret seeing the House of Representatives embark upon a sea as uncertain and in my opinion as dangerous as this one.

Opposing the resolution, the gentleman from Massachusetts, Mr. McCormack, among other things, said:

> The majority and minority reports of the committee met the basic issue head on. I think the gentleman from Michigan [Mr. Hoffman] will admit that, because at the outset of the minority report I stated:
>
> "Aside from the serious constitutional objections to the resolution, it proceeds on a highly questionable assumption that the majority of any congressional committee—"

and so forth. I also said:

> The resolution and the majority report squarely raise, as the majority report recognizes, an issue as to whether one branch of our tripartite Government, the legislative, may obtain confidential papers from another branch, the executive, in fields in which that other branch has exclusive jurisdiction.

The gentleman also stated:

> I must recognize that there must be an independence of the other branches which must be preserved the same as the independence of the legislative branch must be preserved, and I say that under our form of government, consisting of the three coordinate branches, the President of the United States is the one to judge, and not the Congress. And, in turn, the judge of the President of the United States is the people.

The gentleman further stated:

> We could not administer the executive branches of Government, because under the Constitution we cannot. Never mind the practical difficulties, we simply cannot. So that the argument that we have the power to appropriate, then it becomes a higher political question of us with the people, just the same as in the case of the President who says that "these papers are papers that in the exercise of my duty as President of the United States and under the Constitution I should not transmit," then he has to answer to the people.
>
> * * * * *
>
> But, again, what I am trying to convey is this: We are debating one of the most important questions that has ever faced the Congress. This is a constitutional question of the deepest importance. That is all I can say.

Discussing the then pending resolution, the gentleman from Louisiana, Mr. Boggs, said:

> It seems to me that this is one of the most flagrant invasions of the authority of the executive by the legislative that has come before the Congress since I have been here. Has the gentleman discussed the constitutional implications of this legislation?

In making answer, the gentleman from Massachusetts, Mr. McCormack, said:

> This is the first time in the constitutional history of our country that this matter has been presented to the Congress in the form of a resolution. It raises this very deep fundamental question that goes to the very roots of our Government in its organizational setup and in its operational operation, and to the very roots of the integrity of the three coordinate branches of Government. These things unfortunately arise every now and then, but to try and meet it by a head-on invasion of other branches necessary to its existence is not the approach. It should be by individual cases. As a matter of fact, if this Congress wanted to approach it and have it acted upon speedily the way to do it would be to summon the one who refused to testify on the ground that the papers were confidential or that the President had ordered him not to do so—a friendly proceeding could be made of it—and when he was brought before the bar of the House he could then exercise his legal right, and I assume it would be in the nature of a writ of habeas corpus and this whole grave question decided in an orderly way by the courts of the country.
>
> I hope that my friends without regard to party, recognizing the solemnity of their oath on this great constitutional question, will pass upon it in accordance with the views they entertain in their conscience, not on the basis of policy, but treat it as a question of the gravest coustitutional nature.
>
> Mr. Chairman, under permission granted to revise and extend, I include the following in my remarks:
>
> (The revised and extended remarks appear as appendix A.)

ONCE MORE

As previously stated, the question presented here has nothing to do with the right of the Congress to obtain information from the executive departments to enable it to legislate wisely.

That right was determined by the United States Supreme Court in *McGrain* v. *Daugherty* ((1927), 273 U. S. 135).

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed was treated as inhering in it. Thus there is ample warrant for thinking, as

we do, that the constitutional provisions which commit the legislative function to the two Houses are intended to include this attribute, to the end that the function may be effectively exercised.

INDIVIDUAL'S RIGHT TO KNOW PROTECTED

The right of the individual to know where his own interests are involved and can be served without injury to the public has been upheld by the United States Supreme Court, where the true rule seems to be expressly stated. Where one who had a cause of action against the United States Government which grew out of an airplane accident sought information from an executive department, Chief Justice Vinson stated the case clearly and, in the opinion of many, correctly. Among other things, he wrote:

> Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the Court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case. It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the Court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence * * *.
>
> * * * * *
>
> On the record before the trial court it appeared that this accident occurred to a military plane which had gone aloft to test secret electronic equipment. Certainly there was a reasonable danger that the accident investigation report would contain references to the secret electronic equipment which was the primary concern of the mission (*United States* v. *Reynolds* (345 U. S. 1)).

EXTENT OF RIGHT TO KNOW

Early in the hearings, it was suggested that, inasmuch as this is the people's government, the people were entitled to any and all information which would throw any light on what the Government was thinking, doing, or proposed to do.

Admittedly, the people's right to know is limited. First, the exercise of the right by everyone just is not practical. Second, no one familiar with the national situation contends for one moment that anyone and everyone, or even Congress or congressional committees, has or have an absolute right to information or records in the possession of the executive departments the disclosure of which would be contrary to public policy.

Further, the claim was made that the people were entitled to know what happened at any and all conferences between those who were discussing present or future legislation or policies.

Some went so far as to suggest that, where minutes were taken at such a meeting, they should be made available. A moment's thought would show that such a policy would prevent a free, confidential discussion between individuals whose duty it was to serve the public. It is obvious that a disclosure of what happened at a conference held in any one of the departments might well show an early drastic difference of opinion even though the discussion ended harmoniously and with unanimity.

No useful purpose could be served by reporting such a disagreement.

Followed through to its logical conclusion, the argument of some of the witnesses, and apparently of others, is that no conversation, argument, or discussion between two individuals or a group can be held from the prying curiosity of anyone if the subject is one being discussed or considered by public officials or employees.

The absurdity of such a contention is apparent when such a test is applied in the ordinary affairs of life.

Its adoption would tend to end any confidential exchange of ideas.

AN OPEN DOOR NOT PRACTICAL

The adoption of the amendment to section 161, Revised Statutes (5 U. S. C. 22), is an effort to make it impossible for those in the executive departments to deny to any one of our more than 170 million people, or to any group or representative thereof, any information or record which may, at the moment, be within the control of any executive department unless there is a statute expressly authorizing the withholding of the information.

Whatever, from a legal standpoint, may be the merit in the proposed amendment, from the practical side it is an absurdity on its face.

If any appreciable number of citizens should at approximately the same time exercise the proposed rights, the Departments would be rendered helpless if an honest attempt was made to answer all.

Is there a Member of the House who has not at some time received from a seeking constituent an honest request for information, compliance with which would have tied up his office for days?

Has anyone ever even made a worthwhile guess at the volume of work involved, the number of workdays which would be required to make full, complete answer when even a conscientious Congressman, or inquiring staff members, have sent out requests?

If interested, take a look at the questionnaires sent out by this and other subcommittees of the Committee on Government Operations.

Personally, I have been curious more than once as to how the executive departments, answering committee inquiries formulated by an ambitious, hard-working staff, have ever been able, answering those inquiries, to do their homework.

WHERE DID H. R. 2767 ORIGINATE?

Let us devote a few moments to consideration of where this legislation came from and why it is here.

When legislation designed to correct an abuse in government is proposed, it is not only interesting but helpful to learn not only the reason, but the source from which it comes.

It is only natural that people who pay the cost of government and whose daily lives are affected by it, should be critical of anything which adversely affects them. This is especially true if any basic right to which they think they are entitled is denied them.

Usually individuals complain, but only when they are personally adversely affected by some action of an individual or their government.

Since November 7, 1955, when the subcommittee began its hearings, not one single letter has come to my desk from an individual either demanding or opposing H. R. 2767 because of a personal grievance, which indicates there is no overwhelming desire from the people for protection of their right to know.

The hearings themselves indicate that the move on the part of the people comes from "the press," sometimes known as the fourth estate. By "the press" is meant those who seek, write, and publish news, express opinions affecting the country and its welfare, in publications of all kinds.

Experience in and out of Congress leads to the conclusion there is no more powerful or effective molder of public opinion, no more effective support or opposition when legislation or political consideration of a candidate is before the public, than that of the press.

Prohibition and its repeal followed press publicity.

The Wagner law was enacted, the Taft-Hartley law replaced it, because of the sentiment of the people as reflected in the press.

Willkie and twice Dewey were made nominees of the Republican Party because of publicity given their candidates by the eastern press. Because the press did not at that time truly reflect the people's desires, neither was elected.

Eisenhower was nominated because of press influence. Some of it, i. e., the charge of dishonesty against Taft made at the convention, untrue. Favorable publicity plus his own personal popularity as a national war hero gave General Eisenhower the election.

It may be that the thought back of H. R. 2767 originated with the press. Be that as it may, a glance at the list of witnesses and at the trend of the hearings and the extensive publicity given the hearings and the charges of the chairman, leads to the conclusion that this measure is primarily one demanded by the press, which is ever on guard.

ALMOST IRRESISTIBLE PUBLICITY

On Wednesday, February 19, 1958, H. R. 2767 was before the full committee in executive session. The provisions of the bill were discussed, but no conclusion was reached.

Nevertheless, apparently a member of the staff notified the press of what had and what had not occurred. A New York official of the press association evidently called State representatives of that organization and almost immediately pressure was put upon members of the committee to support the bill. It was publicly charged that certain members were opposed to giving the people information about the activities of their government. We were accused of attempting to hide something to which the people were entitled.

Typical of wires which were sent as a result of the leaking of information to Cranston Williams, general manager of the American

Newspaper Association, 370 Lexington Avenue, New York, was one which came to me and which reads as follows:

> Dismayed at information, we hope inaccurate, that four Michigan Representatives oppose H. R. 2767 in committee. Michigan newspapers deeply convinced proposal basic to American concept of good government. Firmly favor. Nation can lose sorely needed legislation, Michigan reputation suffer, if our Representatives, so important in Operations Committee, do not support. Hope you advise me soon your considerations indicate your affirmative action.
>
> ELMER E. WHITE,
> *Executive Secretary, Michigan Press Association.*

Other members of the committee received similar demands either by wire or by phone.

I was present during the committee session and I know that the charge apparently made that some members of the committee sought to suppress information to which the people were entitled was false. For example, no vote was taken in the committee and some members referred to were not even present at the committee session. Yet, the heat was on. And it has stayed on—and hot.

Not only were the rules of the House and of the committee violated, but the information apparently given out as to what happened in the executive session was not true. The incident shows how even the press, exceptionally accurate, can be mistaken; how information sought and obtained can lead to unfortunate, unjust results.

The objectives sought by this bill, that is, the making effective the people's right to know, is a worthy one.

It is doubtful if anyone, at least I know of no one, who opposes that objective. However, Members of Congress who are familiar with the everyday operation of the Government, know that you cannot with safety throw wide open the doors to all information regardless of the effect of such action. That is one of the reasons for the opposition to this bill.

It is doubtful if anyone opposes the stated objective of the bill if that be a desire to end the unnecessary coverup secrecy now prevalent. But the adoption of this bill will not do that. More intelligent work in the departments is one answer. All this bill, if adopted, would do would be to make title 5, United States Code, section 22, unavailable as an excuse for improper classification or the withholding of information.

Moreover, whenever the executive—and this includes all departments—decides the public interest requires that certain information or records shall or shall not be disclosed, that decision is in reality based on the constitutional separation of powers. H. R. 2767 does not amend the Constitution. It amends title 5, United States Code, section 22, and title 5, United States Code, section 22, is not the Constitution. Section 161, Revised Statutes (5 U. S. C. 22), tells department heads they may make and publish regulations for the government of their departments. Now, it so happens that these very regulations at times relate to the disclosure of information and records. But title 5, United States Code, section 22, deals only with the authority to make and publish these regulations. The authority to decide whether to disclose or withhold information or records in the public interest stems from the Constitution itself. Since the basic authority involved is,

therefore, constitutional and not statutory, it obviously cannot be altered by title 5, United States Code, section 22, by H. R. 2767, or by any other statutory amendment.

In simple terms, H. R. 2767 would carry the House off on an aimless tangent inviting controversy between Congress and the departments. We don't know where that tangent would take us if, in fact, it would take us to any definite place. We do know it would not go where its advocates say they want to go. And we also know the chances for incidental trouble en route are very good. So why go?

The bill's sponsors want to curb a discretion which springs from the Constitution. So they present a bill which, instead of aiming at the real source of authorities, merely aims at a statute which reflects the power. The approach is like a space-age effort to curb the sun by aiming at the moon because the moon reflects the sunlight.

The proponents of this bill will admit, as they are forced to do, that the authority granted the President by the Constitution, or the President's reasons or manner of using it, is not subject to control by Congress, or by the judicial departments. The only remedy for improper exercise of executive authority on the part of the President is, as we all know, impeachment, or his party's defeat in the next election.

The way in which the measure is presented and its terms indicate that, in spite of the almost universal knowledge on all subjects entertained by at least a majority of the press, those pushing this bill are misdirecting their efforts if their objective be greater opportunity for the average man to know what his government is doing without endangering either the people's welfare or the Nation's security. What they need, if disclosure is their objective, is a constitutional amendment, not an amendment to a statute.

The bill's sponsors seek a better government, a greater opportunity for individuals to know, to realize what their public servants are doing, either in their behalf or otherwise.

The list of witnesses who appeared before the subcommittee might well be considered a list of who's who in the fourth estate.

The case for the bill was opened by distinguished individuals representing the press.

The hearings were closed, the final arguments made by some of the same outstanding witnesses—2 editors, 1 distinguished correspondent, who is a nationally known and fearless magazine writer, 2 attorneys, as well as Harold L. Cross, freedom of information counsel, American Society of Newspaper Editors.

It is doubtful if there is in this country today a more able, constructive thinking, experienced individual than Mr. Cross. A nationally known outstanding attorney, one of the top newspaper lawyers in this country, a lecturer on libel and other laws affecting journalism at Columbia University, he thrice appeared before the subcommittee.

For the people's right to know he made a most convincing statement, a statement which is axiomatic—the right of the people to know what their government is doing.

By no reasonable construction can it be said that he, or any other witness who appeared, advocated the unrestricted giving out and inspection of all information and records in the possession of the executive departments. But that seems to be exactly what compliance with the proposed amendment would do.

It is easy to visualize a green reporter or an experienced hard-boiled one—possibly one who thought the means justified the end—if there be such—confronting a minor official—yes, or even a top one—of one of the departments who feared the power of the press, which can hardly be exaggerated, demanding inspection of a record in the department's possession. The document having been stamped either "secret," "confidential" or something else, the official or employee fearing criticism by a superior, desiring to protect himself, would naturally refuse.

Does it require a vivid imagination to see the reporter, if he happened to be the exceptional one, whose bible was "the right to know", shaking this statute in the face of the department official. You can visualize the result—an avalanche of adverse publicity.

The hearings have stressed the point more than once that executive department officials are fearful of their jobs, hence, that the right to classify or withhold was often inexcusably used because the official or employee was fearful of what might happen if information which should have been classified was not so stamped.

Misconstruing a fundamental right, taking advantage of an attractive slogan, this bill, though neither Mr. Cross or the other witnesses appearing before the subcommittee seemed to realize it, will not correct present unsound practices in the departments.

One result of Mr. Cross' study was The People's Right To Know—a most informative, helpful study of the subject. The hearings show that the staff and the subcommittee in the hearings have followed some of the reasoning set forth in that volume, but have come up with an unsound conclusion.

A careful reading of the hearings and of the report will show that the subcommittee in H. R. 2767 actually failed to provide for any exceptions. It calls for the disclosure of "all."

The efforts of the committee or at least its conclusions have been directed mainly at faultfinding with the manner in which the present administration has handled the classification and the custody of information and records in its control. It would put all information and records in a glasshouse.

The committee report, if judged by its proposal, apparently accepts without any qualification the thought that inasmuch as our Government purports to be the people's government, the people—and each and every one of them—is entitled to know everything that their Government has done, is doing, or proposes to do, and how and why their servants arrive at conclusions.

Just what is this right to know? A right to know what? And who has this right? If we heed the sponsors of H. R. 2767, we hear that everyone has a right to know just about everything. We might ask ourselves, for example: Can the press question the jurors as to why or how they arrived at a verdict? When the court hands down a decision, is the press entitled to invade the secrecy of the conference chamber, know just how and why each judge voted as he did? Does the right to know the verdict include access to the jury room? Because the press has access to a trial, must the judge disclose his thoughts as he ponders sentence? Must he give up his notes and his law clerk's research memoranda? The probation officer's report?

When the United States Supreme Court hands down a decision can the staff of a congressional committee walk over and force the Justices to lay bare their thinking, reasoning, and discourses?

DEPARTMENT AT FAULT

Let there be no mistake. Individuals in the executive departments and agencies, by their official action, undoubtedly based in part upon Executive orders sent down by our Presidents, have obviously grievously misused the authority given the executive department by the Constitution and by section 161 of the Revised Statutes (5 U. S. C. 22). That section as rewritten by H. R. 2767 carries the added clause that it does not authorize withholding information from the public or limiting the availability of records to the public.

POSITIVE AS WELL AS NEGATIVE

If adopted, the section can no longer be used as a coverup for any secrecy.

REQUIRES AFFIRMATIVE ACTION

It is contended that if the language of the amendment is adopted, it is a directive that information must be given, public records made available to the public. For that reason, an amendment was proposed by me in committee which added these words:

> *nor shall this section be construed as requiring the giving of information or the making of records available.*

When at the hearings on February 17, 1958, it was contended that, if to the original section as written, were added the words:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

it would in effect require the giving out of any information or records which might be sought, Mr. Moss, chairman of the subcommittee, said (hearings, p. 3371):

> I think it is very important that we have it quite clear on the record what we do intend * * * It [the proposed amendment] does not direct them [the department heads] to do anything except not use this as authority for withholding.

The other member of the subcommittee, Mr. Fascell, stated (hearings, p. 3375):

> Now, to get affirmatively on the record with respect to the question asked by my colleague, Mr. Hoffman, I will say in my opinion as far as the proposed amendment is concerned, it certainly is not a public record amendment requiring by inverse construction the Executive to make available all information to the public. The amendment does not do that, but I do state that the very existence of the whole statute raises the presumption that this is the case.

If the amendment was not intended as requiring the disclosure of information, it is difficult to see why the amendment first offered in committee should not be adopted. Subcommittee Chairman Moss

stated his objection to my first proposed amendment (H. R. 2810) to his amendment to be (hearings, p. 3371):

> I think the objection that I have to the additional language proposed by you is that it would grant clear authority for any withholding under the contention that it would endanger the national security, unreasonably impair the efficiency of Government operations, result in unfair advantage or disclose the source of information. It gives a whole list of authorities under title 5, United States Code, section 22, to go ahead and withhold.
>
> I think it confuses a right to withhold with the authority to prescribe reasonable regulations for the custody, for the use by agencies and others, and for the preservation of the records of the department or agency.

If the sole purpose of H. R. 2767 is to prevent the departments using section 161 of the Revised Statutes as an excuse for the improper withholding of information, there would seem to be no objection to stating that the section does not also authorize or direct the department to give out information.

H. R. 2767, as it came from the committee, is altogether too broad. It would be used to strip the department of all discretion. It would deny the right of the department to withhold any information or records, no matter how harmful to either the people or the Nation the disclosure might be.

Does any individual have an automatic right to information and records, or do the information and records belong to the public as a whole? What about the public's right to protection?

Practically every witness who appeared before the committee acknowledged there were certain fields of information, certain records which could not be made available to all applicants if the people and the Nation were to be protected. Mr. Cross stated some of the exceptions very, very clearly on page 218 of The People's Right to Know, when he wrote:

> The right of inspection is not claimed in behalf of public and press in respect of records pertaining to state secrets, diplomatic communications, confidential military matters the disclosure of which might give aid to actual or potential enemies, or of such other records as may be determined by due process of law to be of such nature that inspection thereof would be contrary to the public interest.

Nor do the more fervent, vigorous, and persistent advocates of the public's right to know contend that the department should be required to disclose information or records affecting the "military or diplomatic fields or the manifold aspects of atomic energy secrecy." Nevertheless, the bill ignores all exceptions.

Moreover, that the right to know is not an unqualified, absolute constitutional right is shown by the fact that Mr. Cross, in his publication, lists some 54 statutory enactments prior to 1953 which restricted the claimed right to know. Since that time additional limitations of the public's right to know have raised the total to approximately 78.

CLAIMED JUSTIFICATION FOR BILL

The repeated and long continued misuse, by classification or otherwise, denying to the committee information to which they are entitled may be ample justification for remedial legislation but not for H. R. 2767.

The proper remedy for the abuses by the departments will be referred to hereafter.

From first to last the argument of the witnesses, of the committee staff and members ran this way.

This is a government of and for the people. Therefore, the people have the right to know what their Representatives—everyone in the executive departments and in the Congress are doing and saying, and in some cases, even thinking.

The first amendment—free speech and free press—seemed to be continually in the minds of the witnesses, as it should be in the minds of all.

But the witnesses seemed to forget or deliberately ignored the fact that no right granted by the Constitution is absolute. The Declaration of Independence does state all are entitled to "life, liberty and the pursuit of happiness." However, it is a matter of common knowledge that one guilty of murder may have his life taken from him; that one who commits a felony may lose his liberty, and the citizen who starts out in the pursuit of happiness is denied his desired goal when he takes an undue amount of intoxicating liquor and seeks pleasure in public places—unless happiness is obtained by incarceration.

True, the first amendment does state that Congress shall make no law—"abridging the freedom of speech or of the press" but none is so naive as to believe that he may either say or print whatever he may desire.

The committee's apparent conclusion that this being the people's Government, the people, and each individual thereof, have an absolute right to any and all information in the possession of the executive departments may be sound in theory but is not in accord with constitutional provisions which vest authority in three separate and distinct departments.

Title 5, United States Code, section 22 undoubtedly has been used by executive departments to cover up obvious mistakes, deliberate, improper, perhaps sometimes criminal actions.

It is a fact that the departments have from time to time improperly classified as either secret, confidential, or restricted, information to which the public was entitled and the disclosure of which would harm no one. But it is not a cure to attempt, by the proposed amendment, to invade the executive departments, compel the disclosure of any and all information and all records demanded by anyone.

A REMEDY IS NEEDED

It became apparent to me early in the hearings, that the proposed amendment to section 161 would lead to bitter controversy between the Congress, members of the press, and perhaps an occasional individual. Witnesses were asked to suggest a proper effective remedy. The one suggested would not only be ineffective but lead to needless controversy.

One remedy would be a centralization of the power of censorship now exercised by the executive departments.

It is necessary to guard against being so unduly preoccupied with one aspect of a situation that we lose perspective and consider freedom of information as the end to be striven for rather than as the means to an end in better government that it is.

For most of us it is difficult to see a whole problem in our tendency to see it only as it affects ourselves—sometimes with the eyes of those upon whose support we depend for reelection.

Practically every move of the committee has been given wide and favorable publicity. One familiar only with that publicity would conclude that the greatest present danger to the Republic was the inability of the man on the street to unrestricted access to the files in the executive departments.

It is conceded that good government is dependent upon the people's knowledge of what that government is doing and the reasons therefor. It is equally true that the Congress cannot by legislation give to Government officials [or to Members of Congress for that matter], commonsense, sound judgment or infallibility. Other than broad general rules, and those not in conflict with the constitutional provisions, it is obvious that the Congress cannot write legislation which will automatically justly guide the executive department in every case when the question is as to whether information or records must be withheld and made available to the public.

Heads of the departments are selected because of their ability, their sincerity, their patriotism, and their good judgment. They are first named by the President, then screened by the Senate. If they then cannot be trusted to exercise discretion vested in them by the Constitution and by the Congress, just where should the responsibility rest?

As has been several times stated, at present where the right of Congress or of the individual with a personal interest in information is being determined, the ultimate decision is with the judicial department.

When the right of all others to know is involved, the decision at present rests in the first instance with the individual in the department who first passes upon the request. That procedure has resulted in abuse. One remedy is better administration.

If we must have further legislation, then perhaps we should, after careful inquiry, write legislation which would permit appeal first to the good judgment of the department head and then perhaps, if that is not sufficient, to a board of, say, three department heads selected by the President to act in the capacity of an appellate agency.

In my judgment, the present abuses, the unjustifiable secrecy, grow out of, first, the "bigness" of our Government, and, second, the desires inherent in most of us to cover up our own mistakes, and, third, in some degree to the desire to avoid doing anything which we are not forced to do.

To date we have followed the usual congressional procedure:

(1) Appointed a committee,
(2) Held hearings,
(3) Come up with a report,

and, in my judgment, a bill which is not a remedy for the abuse sought to be corrected. The bill should be sent back to the committee with

instructions to come up with a bill establishing a uniform policy insofar as that can be done by legislation, then giving an appeal to some top responsible official or officials in the department.

My present suggestion as a place to start would be an amendment similar to the following:

AMENDMENT TO H. R. 2767

SEC. 2. (a) There is hereby established a board to be known as the Government Information Board (hereafter in this section referred to as the "Board"), which shall be composed of three individuals, designated by the President from among the Secretaries and Under Secretaries of the executive and military departments, one of whom he shall name as Chairman. No individual shall continue to serve as a member of the Board except while holding office as a Secretary or Under Secretary. The Board shall meet upon the call of the Chairman.

(b) Where any person requests that information or records in the possession of any department, agency, or instrumentality in the executive branch of the Government be disclosed or made available to him, and such request is denied, he may appeal to the Board for a determination of whether or not such information or records should be disclosed or made available to him. If the Board determines that the disclosure or making available of such information or records to such person is not prohibited by law, and would not be contrary to the public welfare or the national security, the Board shall order that such information or records be disclosed or made available to such person, and such records or information shall thereupon be disclosed or made available to such person. If the Board determines that the disclosure or making available of such information or records to such person is prohibited by law, or would be contrary to the public welfare or national security, the Board shall order that such information or records not be disclosed or made available to such person.

(c) This section shall not limit—

(1) the authority of any court or committee of the Congress to require the disclosure or making available of information or records; or

(2) the disclosure or making available of information or records in any criminal proceeding.

CLARE E. HOFFMAN.

APPENDIX A—EXTRACTS FROM CONGRESSIONAL RECORD—MAY 12, 1948

The constitutional objections to House Joint Resolution 342 may be briefly summarized as follows:

The resolution will result in the coercion of the executive departments. Its purpose is to compel the heads of those departments, against the wishes of the President, to furnish information, papers, and documents to congressional committees after the President has

determined that it would be against the national public interest to do so. In effect, the resolution proposes to make of the executive departments an adjunct of the legislative branch. Henceforth, says the resolution, heads of the executive departments are to be the servants of the majority of a congressional committee, which shall have the power to supervise the executive branch of the Government. In short, to the extent that congressional committees are to direct the executive departments, in violation of and against the orders of the President, and the heads of those departments, those committees will be clothed with a supreme unrestrained executive power. It will be helpful to review what the Constitution states concerning the executive power.

The Constitution provides:

"The executive power shall be vested in a President of the United States" (art. 2, sec. 1, clause 1).

Before entering on the execution of his office the President must take an oath:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States" (art. 2, sec. 1, clause 7).

And the President is also required to "take care that the laws be faithfully executed"—article 2, section 3.

While the Constitution does not mention the words "Cabinet officer" or "Cabinet member." It does provide that the President may require the opinion in writing of the principal officers of each of the executive departments, and the President is also given power, with the Senate's consent, to appoint the heads of departments—article 2, section 2, clause 2.

From 1789 until 1913 there were established 10 executive departments, all of which partake of one uniform system and function, to enable the President to perform his duties under the Constitution as the Chief Executive officer of the Nation. The present attempt by Congress to interfere with the President's executive function is not new. Attorney General Mitchell, in an opinion to President Hoover dated January 24, 1933, wrote:

"Attempting to have committees of Congress approve Executive acts, or execute administrative functions, or participate in the execution of laws is not a new idea. Carried to its logical conclusion it would enable Congress, through committees or persons selected by it, gradually to take over all Executive functions or at least exercise a veto power upon Executive action, not by legislation withdrawing authority, but by the action of committees, or of either House acting separately from the other" (37 Op. A. G. 62).

II. COURT DECISIONS

The rule of law which governs the exercise of the President's power, under the Constitution, to control the acts of the heads of departments, was stated by Chief Justice Marshall in *Marbury* v. *Madison* (1 Cranch 137, 143, 144 (1803)), as follows:

"By the Constitution of the United States, the President is invested with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in

his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political; they respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive" (p. 164).

The assertion has also been made that since Congress created the executive departments, they necessarily have the power to compel the heads of those departments to obey its commands, rather than the President's wishes. Chief Justice Taft answered that contention as follows:

"But it is contended that executive officers appointed by the President with the consent of the Senate are bound by the statutory law and are not his servants to do his will, and that his obligation to care for the faithful execution of the laws does not authorize him to treat them as such. The degree of guidance in the discharge of their duties that the President may exercise over executive officers varies with the character of their service as prescribed in the law under which they act. The highest and most important duties which his subordinates perform are those in which they act for him. In such cases they are exercising not their own but his discretion. This field is a very large one. It is sometimes described as political. (*Kendall* v. *United States* (12 Peters, 524 at p. 610).) Each head of a department is and must be the President's *alter ego* in the matters of that department where the President is required by law to exercise authority. (*Myers* v. *United States* (272 U. S. 52, 132–133).)"

After citing instances of Executive dealings with foreign governments and with domestic problems, Chief Justice Taft stated:

"In all such cases, the discretion to be exercised is that of the President in determining the national public interest and in directing the action to be taken by his executive subordinates to protect it. In this field his Cabinet officers must do his will. He must place in each member of his official family, and his chief executive subordinates, implicit faith * * *

"The duties of the heads of departments and bureaus in which the discretion of the President is exercised and which we have described, are the most important in the whole field of executive action of the Government" (p. 134).

Finally, in *Humphrey's Executor* v. *United States* (295 U. S. 602), the Court stated:

"The fundamental necessity of maintaining each of the three general departments of Government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers of these departments by the Constitution; and in the rule which recognizes their essential coequality. The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there" (pp. 629–630).

In *McGrain* v. *Daugherty* (273 U. S. 135 (1926)), the principal question before the Court was whether the Senate had the power, through

its own process, to compel a private individual to appear before one of its committees, in order that he might give testimony needed to enable the Senate efficiently to exercise a legislative function belonging to it under the Constitution.

After reviewing the legislative practice beginning with an investigation by the House of Representatives in 1792, the statutes relating to the compulsion of the testimony of private persons, and the Court decisions, the Court thus stated its conclusion:

"So, when their practice"—referring to both Houses of Congress—"in the matter is appraised according to the circumstances in which it was begun and to those in which it has been continued, it falls nothing short of a practical construction, long continued, of the constitutional provisions respecting their powers, and therefore should be taken as fixing the meaning of those provisions, if otherwise doubtful" (p. 174).

The heart of the case, and the reason for the Court's finding that there was a legislative power to summon private persons for inquiry, was because of a practice, long continued, of summoning private persons before the Houses of Congress to give testimony and to produce papers.

Applying the principle of the Daugherty case to the long-continued practice by the executive branch to withhold confidential papers from Congress and its committees, we find:

"1. Ever since 1796, the executive branch has asserted the right to say 'No' to the Houses of Congress, when they have requested confidential papers which the President or the heads of departments felt obliged to withhold, in the public interest.[1]

"2. Beginning with the denial by a court, in a criminal trial, of a subpena for the production of a letter by President Adams in 1800,[2] the courts have uniformly held that they will not compel a President or head of department to give testimony or to produce papers which, in his judgment, required secrecy.[3]

"3. More significant still is the fact that never in our entire history has either House taken any steps to enforce requests for the production of testimony or documents which have been refused by the executive branch. In the two famous debates on this subject, in the Cleveland and Theodore Roosevelt administrations, it was admitted that it was useless to pass resolutions aimed at forcing compliance by the Executive with congressional requests for papers and documents, when the Executive could ignore such resolutions." [4]

It appears clear, therefore, that we have, in the words of the Supreme Court in the Daugherty case, "a practical construction, long continued, of the constitutional provisions respecting their powers," by the executive and legislative branches—273 United States 174. The long-continued practice of the executive branch to withhold confidential papers, in the national public interest, from the legislative branch, and the passage of no law by Congress to change that practice argue persuasively for the possession of such a power, under the Constitution by the Executive. It is not likely that the United States Supreme Court will lightly ignore more than 150 years of legislative acquiescence in the assertion of that power.

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[1] William Howard Taft, Our Chief Magistrate and His Powers (1916), p. 129; Binkley, President and Congress (1947), pp. 44, 167; Finley and Sanderson, the American Executive and Executive Methods, pp. 199 ff.
[2] Trial of Thomas Cooper, Wharton's State Trials (1800), p. 667.
[3] *Marbury* v. *Madison*, supra, p. 3 of this memorandum.
[4] Forty-third CONGRESSIONAL RECORD 3730, 3732 (1909).

Our conclusion is fortified by the views of William Howard Taft, who wrote, following his retirement from the Presidency and prior to his appointment as Chief Justice:

"There is in the scope of the jurisdiction of both the Executive and Congress a wide field of action in which individual rights are not affected in such a way that they can be asserted and vindicated in a court. In this field the construction of the power of each branch and its limitations must be left to itself and the political determination of the people who are the ultimate sovereign asserting themselves at the polls. Precedents from previous administrations and from previous Congresses create an historical construction of the extent and limitations of their respective powers, aided by the discussions arising in a conflict of jurisdictions between them." [5]

Referring to the Daugherty case, the Supreme Court, in *Sinclair* v. *United States* (279 U. S. 263, 291), stated:

"And that case shows that, while the power of inquiry is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard for the rights of witnesses, and that a witness rightfully may refuse to answer where the bounds of the power are exceeded or where the questions asked are not pertinent to the matter under inquiry.

"It has always been recognized in this country, and it is well to remember that few, if any, of the rights of the people guarded by fundamental law are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary, or unreasonable inquiries and disclosures in respect of their personnl and private affairs. In order to illustrate the purpose of the courts well to uphold the right of privacy, we quote from some of their decisions" (pp. 291–292).

Both the Daugherty and Sinclair cases dealt with private individuals who had refused to testify before Senate committees. We have noted the statement of the Supreme Court that there are bounds of power which Congress and its committees may not exceed in questioning private persons, whose rights are guarded by fundamental law. The rights of the executive branch would seem to be guarded by the same fundamental law, the Constitution, which declares the executive branch to be independent of the other two branches, and gives it the right to resist unbounded assertions of inquiry. If, in the judgment of the Supreme Court, private witnesses may rightfully refuse to answer, the President and heads of departments have their rights not to answer inquiries requiring disclosure of confidential information, which they have asserted almost from the beginnings of our Government.

III. THE HOUSES OF CONGRESS HAVE IN THE PAST FOLLOWED THE SUPREME COURT DECISIONS

The foregoing decisions of the Supreme Court, which declare that the decision of the Executive is conclusive in matters involving the exercise of political and executive discretion, have been acted upon by the House of Representatives and Senate. Thus, in 1879, during the administration of President Hayes, the House Judiciary Committee had to deal with the failure of George F. Seward, consul general

[5] Taft, Chief Magistrate (1916), pp. 1–2.

of the United States in China, to testify before the House Committee on Expenditures in the State Department. Seward had failed to produce records pursuant to a subpena. The Judiciary Committee report stated that Seward was not in contempt for the following reason:

"And whenever the President has returned"—as sometimes he has—"that, in his judgment, it was not consistent with the public interest to give the House such information, no further proceedings have ever been taken to compel the production of such information. Indeed, upon principle, it would seem that this must be so. The Executive is as independent of either House of Congress as either House of Congress is independent of him, and they cannot call for the records of his action or the action of his officers against his consent any more than he can call for any of the journals and records of the House or Senate." (Rept. No. 141, p. 3, 45th Cong., 3d sess.)

The report concluded by boiling the issue down to this narrow point: Who is the best judge, in a close case, of the propriety of divulging to any committee of the House state secrets? Is it the House or is it the President? We quote from the report:

"Somebody must judge upon this point. It clearly cannot be the House or its committee, because they cannot know the importance of having the doings of the executive department kept secret. The head of the executive department, therefore, must be the judge in such case and decide it upon his own responsibility to the people, and to the House, upon a case of impeachment brought against him for so doing, if his acts are causeless, malicious, willfully wrong, or to the detriment of the public interests." (Rept. No. 141, pp. 3–4, 45th Cong., 3d sess.)

In the Senate debate on the Legislative Reorganization Act of 1946, Public Law 601, Seventy-ninth Congress, Senator Donnell's familiarity with the Supreme Court's views and decisions concerning the separation of powers of the three branches of our Government was directly responsible for striking out the word "surveillance" and the substitution for it of the word "watchfulness" in section 136 of the act.

Section 136 provides that to assist Congress in appraising the administration of the laws, and in developing necessary legislation, each standing committee of the Senate and the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of all laws, the subject matter of which is within the jurisdiction of such committee.

Senator Donnell feared that if the standing committees of the Senate and House were to have the power of surveillance of the executive branch they would, by the very definition of that word, have the right to inspect and review what the executive agencies were doing. But, under the Constitution, that would be an improper exercise of power by the legislative branch. We quote the views of Senator Donnell and Senator La Follette in the Senate debate:

"Mr. DONNELL. * * * I do, however, have in mind this point: It seems to me that we clearly have in our type of Government three distinct divisions—the judicial, the executive, and the legislative. It appears to me that when the legislative has enacted legislation the function of administering the legislation thereupon rests with the executive department of the Government. I do not deem it advisable that the legislative department shall undertake either to make itself

an adjunct to the executive department or that it shall have upon itself the responsibility of seeing that there is a proper administration of the law which it has itself passed and the administration of which it has cast upon specific persons or agencies.

"It appears to me that it would be very unfortunate if there should arise the inference from this section of the bill that it is intended hereafter that the standing committees of this body shall be in effect an operating branch of the Government and shall undertake to control the exercise of power by the administrative agencies.[6]

"Mr. La Follette. * * * I am just as conscious as is any other Senator of the field upon which the Congress must not transgress, and has no right to transgress. That is the field of administering and executing the laws." [7]

It is well to point out that Senator La Follette was head of a Senate committee, and was coauthor with Congressman Monroney of the legislative reorganization bill. The bill, as finally adopted in the Senate and the House, was the "end product of more than a year of study, hearings, and deliberations conducted by the Joint Committee on the Organization of Congress—Ninety-second Congressional Record, page 6344.

Although Senator La Follette's original report to the Senate proposed the "inspection and review" of the administrative agencies of the Government by the standing committees of the Senate and House—Report 1400, Seventy-ninth Congress, second session, May 31, 1946, page 6—he was obliged to accept Senator Donnell's amendment following debate. Furthermore, the Senate rejected an amendment which was offered by Senator McClellan which aimed at the compulsion of both testimony and papers from the heads of departments and other Government employees and officials—Ninety-second Congressional Record, 6555, 6566. Thus, the Legislative Reorganization Act, and in particular section 136, which we discussed, represents the crystallized views on the reorganization of Congress following painstaking work by a joint Senate and House committee, and debate by the House and Senate.

The quintessence of the argument which won the Senate's approval of the present wording of section 136 of the Reorganization Act, and rejected the terms "inspection and review," "surveillance," or superintendence by the legislative branch of the executive branch, is contained in the following words, which were likewise uttered by Senator Donnell:

"Mr. Donnell. * * * To my mind, we are discussing something of fundamental importance. To my mind, the obligation of the Congress of the United States does extend to the point of watchfulness, and to the extent of subsequent legislation which may prove necessary in order to correct abuses. But I do not believe that it is the duty of the Congress of the United States to undertake to administer the respective executive branches.[8]"

[6] Congressional Record, 6445 (1946).
[7] Ibid, p. 6446.
[8] 92 Congressional Record 6446 (1946).

IV

Tested by the foregoing Supreme Court decisions, and by the action of both Houses of Congress, the resolution constitutes an unconstitutional encroachment by the legislative branch upon the executive branch.

V. MISCONCEPTIONS IN THE MAJORITY REPORT

It may be well to address ourselves briefly to some fundamental errors which appear in the report of the majority of the committee, and in the answer to minority report—House Report 1595, 80th Congress, 2d session.

(a) In the amended version of the joint resolution the words "created by the Congress" were inserted in line 4 of page 1. That insertion appears to conform with the statements contained on page 4 of the majority report under the heading "The issue." It highlights the reasons for the assertion by a majority of the Committee of a power to direct the executive departments.

The proponents of the resolution assert that since Congress has authority to create the executive departments, and has exercised that authority, and since it is charged with the duty of appropriating funds and enacting legislation for the proper and effective activities of the executive agencies, it therefore has both the right and the duty to obtain all needed information from the executive agencies.

We have referred to Chief Justice Taft's answer to the foregoing argument in the Myers case—see pages 3 and 4 of this memorandum. We will therefore not dwell upon it here. However, it is well to point out that neither the resolution nor the arguments of the proponents are new. A similar resolution was introduced in the Senate in the administration of Theodore Roosevelt. It provided that every public document in the files of any department of the Government relating to any subject over which Congress had jurisdiction was subject to the call or inspection of the Senate—Forty-third Congressional Record 839, 1909; Senate Resolution 248, Sixtieth Congress, second session.

The arguments of the Senators who favored adoption of the resolution were: Congress was responsible, in the very beginning of our Government, for creating by statute the executive departments. What Congress created, it can at any time modify by statute or entirely abolish. Since Congress created the departments, the heads of those departments owe their principal obligation to it. Either House of Congress may, therefore, demand compliance by heads of departments with calls for information and papers.

Opponents of the resolution argued that it was impossible to settle a controversy with the executive branch by means of a resolution. Final settlement lay "in the observance by both Houses of Congress of the constitutional relations that exist between the coordinate departments of the Government." Senator Dolliver asked some pointed questions in the 1909 debate which struck at the vitals of the controversy. He said:

"What I want to know is, where Congress gets authority either out of the Constitution or the laws of the United States to order an executive department about like a servant." (43 Congressional Record, p. 3732 (1909).)

Senator Rayner answered by asserting that each House of Congress had the power to order anyone that had information or documents coming within its jurisdiction and control. He cited the Kilbourn and Chapman cases—*Kilbourn* v. *Thompson* (103 U. S. 168); *In re Chapman* (166 U. S. 661)—in support. Senator Dolliver replied that those cases involved private citizens who had refused to appear and give testimony before committees of the Senate, and not officials of the executive departments—Forty-third Congressional Record, page 3732.

Senator Beveridge made the point that "there was the gravest possible question of power involved." He went on to assert that, assuming that the Senate were willing to ignore all the precedents, beginning in Washington's day, and assuming that the Senate had the power to demand information from the executive departments, "to whom should the demand go? Should it not go to the President?" He went on and asked:

"It is possible that the Congress should not direct its demand for information to the supreme head of the executive departments? All of those departments act in unison. It is to the efficiency of the Government that they act in unison. Shall Congress in a mood of petulance or anything else go over the head of the President, to whom it should respectfully prefer its request, and go to one of his Cabinet members? What is the objection to having the President direct his various Cabinet officers as to furnishing the information demanded by Congress? That question has not even been touched upon in this debate.

"So we see it is not only a question of power, but it is also a question of propriety. It occurs to me that a President would be seriously lacking in self-respect who did not resent passing over his head to one of his Cabinet officers." [9]

The debate also developed the point that there was no way to enforce the resolution if the President directed the heads of departments to disregard it. The President and the heads of departments, in a proper case, might resolve to pay no attention to any request for documents; passing the resolution, therefore, would be a futile gesture—Forty-third Congressional Record, pages 3730, 3732, 1909.

The resolution did not come to a final vote.

Professor Willoughby, in his well-known treatise, The Constitutional Law of the United States, discusses the resolution and refers to the foregoing Senate debate. He concludes that the constitutionality of the position taken by President Theodore Roosevelt would seem to be clear. President Roosevelt had refused to the Senate Judiciary Committee the information which the Senate resolution aimed to obtain, and had instructed Colonel Knox, the head of the Bureau of Corporations, Department of Commerce, who had the documents in question, to ignore a subpena requested by the Senate Judiciary Committee, as well as the threat of that committee to imprison Colonel Knox for failure to honor the subpena.

Referring to the contests between Congress and the Presidents as to the right of the former to compel the furnishing to it of information, Willoughby states that it has been established that the President may exercise full discretion as to what information he will furnish, and

[9] Ibid., 3738 (1909).

what he will withhold—W. W. Willoughby, The Constitutional Law of the United States, second edition, 1929, pages 1488–1491; see also Forty-first Congressional Record, pages 104, 105, 1906.

The Joint Committee on the Organization of Congress published a joint committee print wherein the views of Prof. Herman Finer of Harvard University are contained. We quote therefrom:

"But how far can the Executive be compelled to answer—this is the decisive question. It would seem to me that the Executive is highly protected. Impeachment is a birch rod in a cupboard too far away from the everyday domestic scene to worry a department head. *McGrain* v. *Daugherty* (237 U. S. 135, 1927) gives a wide interpretation to the power of inquiry, but does not refer to those who currently hold office, as against the Presidential power to direct them not to give information.

"In 1906 (Congressional Record, December 6, 1906), the gist of a Senate debate on the subject of obtaining information from Cabinet officers, even when directed by resolution of the Senate, was that information had been withheld in whole or in part by order of the President, and no remedy was available. Cleveland (Senate, March 1, 1886) supported his Attorney General in refusing information to the Senate.

* * * * * * *

"* * * It is the President who has the sole constitutional authority to see that the laws are faithfully executed, with the vast meaning this phrase has acquired. * * * His Cabinet has small authority distinct from his authority: In the sense that really matters they are subordinates." [10]

Views similar to those expressed by Professors Willoughby and Finer are to be found in standard texts which have been written on the Constitution and on the relationship of the President to Congress:

Charles K. Burdick, former dean of Cornell Law School and chairman of the Law Revision Commission of the State of New York, The Law of the American Constitution, 1922, pages 127–128.

Edward S. Corwin, The President: Office and Powers, 1941, pages 213–214, 281.

Ernest J. Eberling, Congressional Investigations, 1928, page 282.

John H. Finley and John F. Sanderson, the American Executive and Executive Methods, 1908, pages 199–200, 231–233, 264, 265.

John Philip Hill, the Federal Executive, pages 55–56.

Edward Campbell Mason, Congressional Demands upon the Executive for Information, papers of the American Historical Association, volume 5, 1891, page 33.

William Rawle, A View of the Constitution of the United States of America, 1829, pages 171–172.

William Howard Taft, Our Chief Magistrate and His Powers, 1916, page 129.

Woodrow Wilson, Constitutional Government in the United States, 1907, pages 66–67, 76, 205.

(b) A second misconception contained in Congressman Hoffman's answer to the minority report is the statement that title 2 of the United States Code, section 192, does not excuse any individual from answer-

[10] His paper bears the title: "Questions to the Cabinet in the British House of Commons: Their Applicability to the United States Congress," Joint Committee Print, 79th Cong., 2d sess., The Organization of Congress, June 1946, pp. 56, 57.

ing process issued by a congressional committee—House Report 1595, part 2, Eightieth Congress, second session, page 7.

In re Chapman (166 U. S. 661) involved the refusal of a private individual to appear as a witness before a special committee of the Senate. He was tried under sections 102, 103, and 104 of the Revised Statutes. Those sections are substantially the same as sections 192, 193, and 194 of title 2, United States Code. The Court held that Congress had the power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence.

The Chapman case was decided in 1897. For approximately 40 years prior to that decision, there had been a law, similar to the present sections 192, 193, and 194—sections 102, 103, and 104 of the Revised Statutes aforementioned—designed to compel the testimony of witnesses before the Houses of Congress. Nevertheless, in the famous Senate debate of 1886, the most notable debate of its kind in the annals of Congress—that debate arose out of the refusal of the Attorney General, at the direction of President Cleveland, to furnish the Senate with the reasons for the removal of a United States attorney, the President taking the position that the records were confidential and of a private nature despite the fact that they were filed with the Department of Justice; the records were never produced to the Senate, despite a strongly worded Senate resolution directed to the Attorney General, Seventeenth Congress, Record, pages 2211–2814, of 1886—and in the Senate debate of 1909 referred to above, it was freely admitted that there was no statute which compelled the head of a department to give information or papers to the Houses of Congress against the President's wishes—Forty-third Congress, Record, page 3730, 1909, and page 3732; see also Forty-first Congress, Record, pages 104, 105, 1906. Moreover, almost from the beginning of our Government, heads of departments and other officials of the executive branch had failed to comply, on the ground of the national public interest involved, with congressional demands for information and papers. Not in a single instance was any action ever taken by the Houses of Congress against a head of a department or other official who thus refused to comply.

It must be concluded, therefore, that while sections 192, 193, and 194 of title 2, United States Code, dealing with the refusal of witnesses to testify in congressional investigations, apply to private citizens and persons, they have never been applied to the executive departments and, indeed, must be considered inapplicable to them.

(e) Congressman Hoffman's answer to minority report, in dealing with the right of Congress, states that "the law which governs us is the common law, the Constitution and the acts of Congress as interpreted by the courts—House Report 1595, part 2, Eightieth Congress, second session, page 4. Of course, the Constitution and the acts of Congress as interpreted by the courts are authoritative. The following quotation from the Supreme Court's decision in *Kilbourn* v. *Thompson* (103 U. S. 168) should, however, put an end to contentions that precedents which were relevant to English parliamentary investigations apply to investigations conducted by the Congress:

"We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices

of the two houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices (p. 189).

* * * * * * *

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfeetion of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, upon that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other" (pp. 190–191).

It is important to note that McGrain against Daugherty and Sinclair against United States, supra, both referred to the Kilbourn decision and to the restraints which it imposed on the congressional power of inquiry. And in Barsky against United States—Appendix District of Columbia, No. 9602, decided March 18, 1948, page 5—the Court, citing the Kilbourn case as well as McGrain against Daugherty, said: "The eongressional power of inquiry is not unrestricted."

It is clear from the foregoing that the President and the heads of departments may not be compelled to produce papers or disclose information in their possession where, in their judgment, such disclosure would be contrary to the public interest.

It is worth noting that President Washington, in his farewell address, cautioned against the dangers resulting from the encroachment of one branch of the Government upon another. He said:

"It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to eneroach upon another. The spirit of encroachment tends to consolidate the powers of all departments in one, and thus to create, whatever the form of government, a real despotism." [11]

House Joint Resolution 342 is a clear example of an encroachment by the legislative branch upon the executive braneh.

THE RIGHT OF THE PRESIDENT, AND THE HEADS OF DEPARTMENTS, IN THE NATIONAL PUBLIC INTEREST, TO KEEP INFORMATION AND PAPERS IN THE EXECUTIVE DEPARTMENTS CONFIDENTIAL—THE VIEWS OF TEXT WRITERS

William Howard Taft, Chief Magistrate, 1916:

"The President is required by the Constitution from time to time to give to Congress information on the state of the Union, and to reeommend for its consideration such measures as he shall judge necessary and expedient, but this does not enable Congress or either House of Congress to elicit from him confidential information which he has acquired for the purpose of enabling him to discharge his

[11] Richardson, Messages and Papers of the Presidents, vol. 1, p. 219.

constitutional duties, if he does not deem the disclosure of such information prudent or in the public interest" (p. 129).

Westel Woodbury Willoughby, the Constitutional Law of the United States, 1929, volume III:

"The constitutional obligation that the President shall from time to time give to the Congress information of the State of the Union. and recommend to their consideration such measures as he shall judge necessary and expedient has, upon occasion, given rise to controversy between Congress and the President as to the right of the former to compel the furnishing to it of information as to specific matters. As a result of these contests it is practically established that the President may exercise a full discretion as to what information he will furnish, and what he will withhold.

"The discretionary right of the President to refuse information to Congress has been exercised from the earliest times" (sec. 968, p. 1488).

Professor Willoughby cites the "vigorous and long-continued controversy" which was waged in Cleveland's administration as to the right of the Senate or of its committees to obtain from the office of the Attorney General certain papers bearing upon certain suspensions from office made by the President. Willoughby also cites the controversy in 1909, in Theodore Roosevelt's administration when the Attorney General, on the President's instructions, refused to divulge to a Senate committee the reasons for nonaction by the Department of Justice in the United States Steel Co. case, for violation by it of the Antitrust Act of 1890. Willoughby cites Roosevelt's classic statement to the Senate:

"Heads of the executive departments are subject to the Constitution, and to the laws passed by Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever" (sec. 968, p. 1490).

Willoughby concludes his comments on the Cleveland and Roosevelt controversies with the Senate, as follows:

"The constitutionality of the positions taken by Presidents Cleveland and Roosevelt would seem to be clear" (sec. 968, p. 1491).

Charles K. Burdick, the Law of the American Constitution, 1922:

"SEC. 51. The Supreme Court's attitude toward political questions: The legislative and executive branches of Government are essentially the political branches, and with the exercise of their distinctively political powers the judiciary will not interfere. On this point Chief Justice Marshall said:

" 'By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

" 'In such cases their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive. The application of this remark will be perceived by adverting to the act of Congress for establishing the depart-

ment of foreign affairs. This officer as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by which that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts' " (pp. 127–128).

Prof. Herman Finer, Harvard University, in a paper entitled "Questions to the Cabinet in the British House of Commons: Their Applicability to the United States Congress":

"But how far can the Executive be compelled to answer—this is the decisive question.

"In 1906 (Congressional Record, Dec. 6, 1906), the gist of a Senate debate on the subject of obtaining information from Cabinet officers, even when directed by resolution of the Senate, was that information had been withheld in whole or in part by order of the President, and no remedy was available. Cleveland (Senate, March 1, 1886) supported his Attorney General in refusing information to the Senate.

"On January 6, 1909, Theodore Roosevelt resisted a Senate demand for information on certain administrative proceedings, arguing: 'I do not conceive it to be within the authority of the Senate to give directions of this character to the head of an executive department, or demand the reasons for his action. Heads of executive departments are subject to the Constitution, and to the direction of the President of the United States, but to no other direction whatever.'

"As for the President himself, Professor Corwin's opinion is authoritative (the President. p. 444); it is certain that a congressional investigating committee could not require the President to attend its proceedings, answer questions, or produce documents.

* * * * * * *

"It is the President who has the sole constitutional authority to see that the laws are faithfully executed, with the vast meaning this phrase has acquired—the maker of the Republic's policy, the watcher of the finances, the supreme manager of the machinery of administration. He is responsible for the every-day conduct of foreign affairs. His Cabinet has small authority distinct from his authority: In the sense that really matters they are subordinates." (Joint Committee Print, 79th Cong., 2d sess., The Organization of Congress, June 1946, pp. 56, 57.)

Edward Campbell Mason, in a paper entitled "Congressional Demands Upon the Executive for Information," asks the question: "Can the President of the United States or his subordinates in the executive department be compelled to transmit papers or give information to Congress?"—Papers of the American Historical Association, volume 5, 1891, page 33.

The instances which he examined did not disclose any power sufficient to compel compliance. While the House may lay claim to the necessary power because of its authority in impeachments, such power was never exercised or even clearly defined. The author next turns to the power of the Senate to act as in impeachment proceedings and inquiries whether the Senate can compel the Executive to furnish information. However, since a court has not the power to compel an executive officer to disclose matters which, in his opinion, should be kept secret, it would appear to follow that, unless the Constitution grants such power, the Senate likewise cannot compel disclosure of confidential information.

The foregoing reasoning led Mr. Mason to conclude that the Congress may not compel the Executive to give information by its power of impeachment. He refers to United States Revised Statutes 102, 103, and 104, which were passed in 1857. Those give either branch of Congress the right to summon witnesses. It would appear, however, that the Executive is outside the operation of that power.

"If my reasoning is sound, Congress derives no power from its legislative authority to compel the President or the officers under him in the executive department to furnish papers or to testify" (ibid., p. 40).

Finally the author urges a practical argument against coercing the executive branch. The three departments of our Government are supreme and independent. It would be impossible for the Congress to coerce the executive branch except by a resort to arms. While a President might be impeached for high crimes and misdemeanors, the author concedes that it is difficult to imagine an impeachment based on a refusal to furnish information. Such a refusal is neither a crime nor a misdemeanor.

John Philip Hill, the Federal Executive:

"Courts cannot usually call upon heads of departments to answer in relation to official acts. The court said, in *Decatur* v. *Paulding* (14 Peters, 522), that many acts required of the heads of the executive departments required use of discretion, and where not purely ministerial were not subject to order of the courts" (p. 55).

On the point that the President is responsible for all acts of his Cabinet and heads of departments, the author states:

"The position of the heads of the executive departments is summed up in Cooley's Blackstone's Commentaries (book 1, pp. 231 and 236). He there states: 'The President, not the Cabinet, is responsible for all the measures of the administration, and whatever is done by one of the heads of departments is considered as done by the President, through the proper executive agent. In this fact consists one important difference between the Executive (King) of Great Britain and of the United States; the acts of the former being considered as those of his advisers, who alone are responsible therefor, while the acts of the advisers of the American Executive are considered as directed and controlled by him' " (ibid., pp. 55–56).

Ernest J. Eberling, Congressional Investigations, 1928:

"It is also true that congressional committees in their ardor to investigate have at times pushed their demands to a point where compliance with them would have interfered with the Executive in the discharge of his constitutional duties. It would seem that the Executive is justified in resisting, therefore, any demand when it is believed that compliance therewith would be incompatible with the public interest. Members of Congress have frequently admitted this point. The decision of the Executive in the case of a dispute must necessarily be final. The question would not be justiciable and the infliction of punishment by one coordinate branch upon the other would be wholly repugnant to the constitutional scheme. The Executive, no less than Congress, is accountable directly to the people and the ultimate decision must rest in such matters with the electorate" (p. 282).

Woodrow Wilson, Constitutional Government in the United States, 1907:

"As legal executive, his constitutional aspect, the President cannot be thought of alone. He cannot execute laws. Their actual daily

execution must be taken care of by the several executive departments and by the now innumerable body of Federal officials throughout the country. In respect of the strictly executive duties of his office the President may be said to administer the Presidency in conjunction with the members of his Cabinet, like the chairman of a commission. He is even of necessity much less active in the actual carrying out of the law than are his colleagues and advisers. It is therefore becoming more and more true, as the business of the Government becomes more and more complex and extended, that the President is becoming more and more a political and less and less an executive officer. His executive powers are in commission, while his political powers more and more center and accumulate upon him and are in their very nature personal and inalienable (pp. 66–67).

"Upon analysis, it seems to mean this: the Cabinet is an executive, not a political body. The President cannot himself be the actual executive; he must therefore find, to act in his stead, men of the best legal and business gifts, and depend upon them for the actual administration of the Government in all its daily activities (p. 76).

"Fortunately, the Federal Executive is not dispersed into its many elements as the executive of each of our States is. * * * But in the Federal Government the Executive is at least in itself a unit. Everyone subordinate to the President is appointed by him and responsible to him, both legally and politically. He can control the personnel and the action of the whole of the great 'department' of government of which he is the head. * * * The three great functions of government are not to be merged or even drawn into organic cooperation, but are to be balanced against one another in a safe counterpoise. They are interdependent but organically disassociated; must cooperate, and yet are subject to no common authority" (p. 205).

John H. Finley and John F. Sanderson, the American Executive and Executive Methods, 1908:

"The President has always exercised a discretion as to giving or withholding information upon the request of either House for it. Thus President Washington declined to communicate to the House of Representatives the correspondence relating to the British treaty. President Jackson in 1833 withheld certain pending matters relating to the Maine boundary dispute; and President Tyler in 1842 declined to lay before the House of Representatives the conditions of the same affair. President Polk in 1845 in like manner withheld information from the Senate as to the pending proceedings for the annexation of Texas, and in 1848 declined to lay before the House the instructions given as to the negotiation of the treaty with Mexico. President Fillmore declined to comply with a request of the Senate made in legislative session for information as to negotiations with the Sandwich Islands. President Buchanan declined to lay before the Senate the correspondence relating to the slave ship *Wanderer*, and President Lincoln likewise declined on March 26, 1861, to communicate Major Anderson's dispatches from Fort Sumter. These instances are referred to as examples of a general practice (pp. 199–200).

"The executive theory of the relations of the President with the heads of departments is that where the law confers a discretion upon one of them, that discretion is subject to his discretion and control. This theory received an elaborate consideration and statement from Attorney General Cushing. After reciting the relevant terms of the

acts of Congress constituting the several executive departments, he said: 'But through all these successive changes in detail, the theory of departmental administration continued unchanged, viz: Executive departments with heads thereof discharging their administrative duties in such manner as the President should direct, and being in fact the executors of the will of the President. All the statutes of departmental organization, except one, expressly recognize the direction of the President, and in that one, the Interior, it is implied, because the duties assigned to it are not new ones, but such as had been exercised by other departments. It could not, as a general rule, be otherwise, because in the President is the Executive power vested by the Constitution, and also because of the constitutional provision that he shall take care that the laws be faithfully executed, thus making him, not only the depository of the Executive power, but the responsible executive minister of the United States.'

"And again he said: 'I hold that no head of a department can lawfully perform an official act against the will of the President, and that will is by the Constitution to govern the performance of such acts. If it were not thus, Congress might, by statute, so divide and transfer the Executive power as utterly to subvert the Government, and to change it into a parliamentary despotism, like that of Venice or Great Britain, with a nominal executive chief utterly powerless—whether under the name of doge or king, or president, would be of little account so far as regards the maintenance of the Constitution' (pp. 231–233).

"Heads of departments, in the exercise of a sound discretion, may decline to furnish communications or papers in their custody in response to legal process; they would be justified in representing to the court that upon public considerations they declined to furnish them. 'The administration of justice is only part of the conduct of the affairs of any State or Nation, and is, with respect to the production or nonproduction of papers from the files of an executive department, subject to the general welfare of the community.' And executive regulations prescribing rules as to the production or nonproduction of such documents have been sustained" (pp. 264–265).

Edward S. Corwin, the President: Office and Powers, 1941:

"Another precedent of great significance from Washington's administration was the first President's refusal in 1796 to comply with a call from the House of Representatives for papers relative to the negotiation of the Jay Treaty. The demand was originally fathered by Madison, and presumably reflected the theory of Helvidius that the President's diplomatic role is chiefly instrumental of the national legislative power in the realm of foreign relationship. Washington's declination, nevertheless, he now conceded to be proper so far as it represented the President's deliberate judgment that the papers were 'of a nature that did not permit of disclosure at this time.' The concession so broadened the force of the precedent that nowadays a President feels free by the same formula to decline information even to his constitutional partner in treaty making, whereas Washington's refusal rested primarily on his denial that the House was entitled to discuss the merits of a treaty. In 1906 a debate arose in the Senate over the adventurous foreign policy of the first Roosevelt, in the course of which the entire ground that had been covered by Pacificus and Helvidius more than a century before was retraveled, Senator Spooner assuming the Hamiltonian part, Senator Bacon the Madisonian. In

the face of his general position Bacon conceded that 'the question of the President's sending or refusing to send any communication to the Senate is not to be judged by legal right, but [is] * * * one of courtesy between the President and that body.' [12] The record of practice amply bears out this statement.

"The further question arises, whether the President's duty 'from time to time [to] give to the Congress information of the state of the Union' infers the duty to give them such information as the Houses, or either of them, may desire, providing he is in possession of it. The answer established by practice from the beginning is that the President is complete master of the situation and is entitled to select both the occasions of his communications and their content. Thus neither the President nor the Secretary of State is ever 'directed' by the Houses to furnish desired information or papers, but only 'requested' to do so, and then only if it is 'in the public interest' and they should comply—a question left to be determined by the President. More than that, however, Presidents have sometimes intervened to exonerate other heads of departments than the Secretary of State, and even lesser administrative officials, from responding to congressional demands for information, either on the ground that the papers sought were 'private,' 'unofficial,' or 'confidential,' or that the demand amounted to an unconstitutional invasion of Presidential discretion" [13] (p. 281).

William Rawle, A View of the Constitution of the United States of America, 1829:

"It is the duty of the President from time to time to give Congress information of the state of the Union; * * * yet it has been always understood that he is not required to communicate more than, in his apprehension, may be consistent with the public interests. Either House may at any time apply to him for information; and, in the regular course of government, can apply only to him, where the matter inquired of, is principally under his superintendence and direction, although they frequently exercise the right to call upon the chief officers of executive departments, on matters peculiarly appertaining to them, and in like manner occasionally refer to the Attorney General of the United States on subjects appropriate to his office. The applications directly to the President, are generally accompanied with a qualification evincing a correct sense of the obligation on his part to avoid or suspend disclosures, by which the public interest, that both are bound to keep in view, might be affected.

"Such disclosures the legislature in general expressly disclaims. In recurrence to our history, it must be obvious, that these official communications are chargeable with being rather more full and liberal than is common in other countries. In support of the practice it has been said, that in republics there ought to be few or no secrets; an illusory opinion, founded on ideal conceptions, and at variance with the useful practice of mankind. If all the transactions of a cabinet, whether in respect to internal or external business, were regularly exhibited to the public eys, its own operations would be impeded; the public mind be perplexed, and improper advantages would

[12] Refers to supporting authority cited by Corwin on p. 404, in particular the Senate debate of December 6, 1906 [Congressional Record], pp. 213–214.

[13] Refers to President Cleveland's special message to the Senate of March 1, 1886, vindicating the Attorney General's refusal to comply with a demand for certain documents relating to the suspension of George M. Duskin from office; also President Roosevelt's special message of January 6, 1909, giving his reasons for directing the Attorney General not to reply to a resolution of the Senate, which asked the reasons for failure by the Attorney General to prosecute the Tennessee Coal & Iron Co.

sometimes be taken. Foreign powers, pursuing as they invariably do, a different course themselves, would justly object to such proceeding" (pp. 171–172).

THE RIGHT OF THE PRESIDENT AND THE HEADS OF DEPARTMENTS, IN THE NATIONAL PUBLIC INTEREST, TO KEEP INFORMATION AND PAPERS IN THE EXECUTIVE DEPARTMENTS CONFIDENTIAL—SUPREME COURT CASES

Marbury v. *Madison* (1 Cranch 137, 143, 144 (1803)) defines the limits at which a court must stop when the head of a department invokes the privilege that the information sought from him is confidential and cannot be disclosed. The court wished to ascertain certain facts relating to a commission which had been issued by President Adams to one Marbury. To that end it summoned Levi Lincoln, the Attorney General, before it for questioning. Mr. Lincoln objected to answering the questions. While he respected the court's jurisdiction, "he felt himself delicately situated between his duty to this court, and the duty he conceived owed to an executive department"—pages 143–144.

He was acting as Secretary of State at the time when the transaction in question had happened. He was, therefore, of the opinion that he was not bound to answer "as to any facts which came officially to his knowledge while acting as Secretary of State"—page 143.

The Court said, that if Mr. Lincoln wished time to consider what answers he should make, they would give him time; but they had no doubt he ought to answer. There was nothing confidential required to be disclosed. If there had been, he was not obliged to answer it; and if he thought that anything was communicated to him in confidence, he was not bound to disclose it—page 144.

The rule of law was stated by the Court as follows:

"By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political: They respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive" (p. 164).

Judge Marshall spoke of the intimate political relation between the President and the heads of departments:

"1. * * * The intimate political relation subsisting between the President of the United States and the heads of departments necessarily renders any legal investigation of the acts of one of those high officers peculiarly irksome, as well as delicate; and excites some hesitation with respect to the propriety of entering into such investigation. * * *

"* * * The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have discretion. Questions in their

nature political, or which are, by the Constitution and laws, submitted to the executive, can never be made in this court" (pp. 168–170).

State of Mississippi v. *Johnson* (71 U. S. 475 (1866)): The court held that the President of the United States could not be restrained by injunction from carrying into effect an act of Congress which was alleged to be unconstitutional. The court held that it had no power to compel the President to perform executive and political duties. We quote:

"Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the acts named in the bill. * * * The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political.

"An attempt on the part of the judicial department of the Government to enforce the performance of such duties by the President might be justly characterized, in the language of Chief Justice Marshall, 'an absurd and excessive extravagance' (p. 499).

"The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.

"The impropriety of such interference will be clearly seen upon consideration of its possible consequences" (p. 500).

A case frequently cited by courts and text writers is *Appeal of Hartranft* (85 Penn. State, Rep. 433 (1877)). The court said:

"We had better at the outstart recognize the fact, that the executive department is a coordinate branch of the Government, with power to judge what should or should not be done, within its own department, and what of its own doings and communications should or should not be kept secret, and that with it, in the exercise of these constitutional powers, the courts have no more right to interfere than has the executive, under like conditions, to interfere with the courts. * * *

"* * * We are inclined to think the conclusion thus reached is wise and discreet; and it is supported by the best text writers of our times. These state the law to be, that the President of the United States, the governors of the several States and their cabinet officers, are not bound to produce papers or disclose information committed to them, in a judicial inquiry, when, in their own judgment, the disclosure would, on public grounds, be inexpedient (1 Greenf. on Ev., sec. 251; 1 Whart. Law of Ev., sec. 604). Thus, the question of the expediency or inexpediency of the production of the required evidence is referred, not to the judgment of the court before which the action is trying, but of the officer who has that evidence in his possession" (pp. 445, 447).

"OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES

"POSITION OF THE EXECUTIVE DEPARTMENT REGARDING INVESTIGATIVE REPORTS

"(It is the position of the Department of Justice, restated now with the approval and at the direction of the President, that all investigative reports are confidential documents of the executive department and that congressional or public access thereto would not be in the public interest.)

"(This accords with the conclusions reached by a long line of predecessors in the office of Attorney General and with the position taken by thePresident from time to time since Washington's administration; and this discretion in the executive branch has been upheld and respected by the judiciary.)

"APRIL 30, 1941.

"Hon. CARL VINSON,
"Chairman, House Committee on Naval Affairs.

"MY DEAR MR. VINSON: I have your letter of April 23, requesting that your committee be furnished with all Federal Bureau of Investigation reports since June 1939, together with all future reports, memorandums, and correspondence, of the Federal Bureau of Investigation, or the Department of Justice, in connection with 'investigations made by the Department of Justice arising out of strikes, subversive activities in connection with labor disputes, or labor disturbances of any kind in industrial establishments which have naval contracts, either as prime contractors or subcontractors.'

"Your request to be furnished reports of the Federal Bureau of Investigation is one of the many made by congressional eommittees. I have on my desk at this time two other such requests for access to Federal Bureau of Investigation files. The number of these requests would alone make compliance impracticable, particularly where the requests are of so comprehensive a character as those contained in your letter. In view of the increasing frequency of these requests, I desire to restate our policy at some length, together with the reasons which require it.

"It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to 'take care that the laws be faithfully executed,' and that congressional or publie access to them would not be in the public interest.

"Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sourees of information it ean rely upon. This is exactly what these reports are intended to contain.

"Disclosure of the reports at this particular time would also prejudice the national defense and be of aid and comfort to the very subversive elements against which you wish to protect the country. For this reason we have made extraordinary efforts to see that the results of counterespionage activities and intelligence activities of this Depart-

ment involving those elements are kept within the fewest possible hands. A catalog of persons under investigation or suspicion, and what we know about them, would be of inestimable service to foreign agencies; and information which could be so used cannot be too closely guarded.

"Moreover, disclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation. As you probably know, much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants—sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency.

"Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people. Even though later and more complete reports exonerate the individuals, the use of particular or selected reports might constitute the grossest injustice, and we all know that a correction never catches up with an accusation.

"In concluding that the public interest does not permit general access to Federal Bureau of Investigation reports for information by the many congressional committees who from time to time ask it, I am following the conclusions reached by a long line of distinguished predecessors in this office who have uniformly taken the same view. Examples of this are to be found in the following letters, among others:

"Letter of Attorney General Knox to the Speaker of the House, dated April 27, 1904, declining to comply with a resolution of the House requesting the Attorney General to furnish the House with all papers and documents and other information concerning the investigation of the Northern Securities case.

"Letter of Attorney General Bonaparte to the Speaker of the House dated April 13, 1908, declining to comply with a resolution of the House requesting the Attorney General to furnish to the House information concerning the investigation of certain corporations engaged in the manufacture of wood pulp or print paper.

"Letter of Attorney General Wickersham to the Speaker of the House, dated March 18, 1912, declining to comply with a resolution of the House directing the Attorney General to furnish to the House information concerning an investigation of the smelter trust.

"Letter of Attorney General McReynolds to the secretary to the President, dated August 28, 1914, stating that it would be incompatible with the public interest to send to the Senate in response to its resolution, reports made to the Attorney General by his associates regarding violations of law by the Standard Oil Co.

"Letter of Attorney General Gregory to the President of the Senate, dated February 23, 1915, declining to comply with a resolution of the Senate requesting the Attorney General to report to the Senate his findings and conclusions in the investigation of the smelting industry.

"Letter of Attorney General Sargent to the chairman of the House Judiciary Committee, dated June 8, 1926, declining to comply with his request to turn over to the committee all papers in the files of the Department relating to the merger of certain oil companies.

"In taking this position my predecessors in this office have followed eminent examples.

"Since the beginning of the Government, the executive branch has from time to time been confronted with the unpleasant duty of declining to furnish to the Congress and to the courts information which it has acquired and which is necessary to it in the administration of statutes. As early as 1796, the House of Representatives requested President Washington to lay before the House a copy of the instructions to ministers of the United States who negotiated a treaty with Great Britain, together with the correspondence and other documents relating to that treaty. In declining to comply with the request, President Washington said:

" '* * * as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office * * * forbids a compliance with your request.' (See Richardson, Messages and Papers of the Presidents, vol. 1, pp. 194, 196.)

"In 1825, the House of Representatives requested President Monroe to transmit certain documents relating to the conduct of the officers of the Navy of the United States on the Pacific Ocean, and of other public agents in South America. In his reply, President Monroe refused to comply with the request, stating that to do so might subject individuals to unjust criticism; that the individuals involved should not be censured without just cause, which could not be ascertained until after a thorough and impartial investigation of their conduct; and that under those circumstances it was thought that communication of the documents would not comport with the public interest nor with what was due to the parties concerned. (See Richardson, Messages and Papers of the Presidents, vol. 2, p. 278.)

"In 1833, the Senate requested President Jackson to communicate to that body a copy of a paper purporting to have been read by him to the heads of the executive departments, dated September 18, 1833, relating to the removal of the deposits of the public money from the Bank of the United States. President Jackson declined. (See Richardson, Messages and Papers of the Presidents, vol. 3, p. 36.)

"In 1835 the Senate passed a resolution requesting President Jackson to communicate copies of the charges, if any, which might have been made to him against the official conduct of Gideon Fitz, late surveyor general south of the State of Tennessee, which caused his removal from office. In reply President Jackson again declined to comply. (See Richardon, Messages and Papers of the Presidents, vol. 3, pp. 132, 133.)

"This discretion in the executive branch has been upheld and respected by the judiciary. The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine. *Marbury* v. *Madison* (1 Cranch 137, 169); *Totten* v. *United States* (92 U. S. 105); *Kilbourn* v. *Thompson* (103 U. S. 168, 190); *Vogel* v. *Grauz* (110 U. S. 311); *In re Quarles and Butler* (158 U. S. 532); *Boske* v. *Comingore* (177 U. S. 459); *In re Huttman* (70 Fed. 699); *In re Lam-*

berton (124 Fed. 446); *In re Valecia Condensed Milk Co.* (240 Fed. 310); *Elrod* v. *Moss* (278 Fed. 123); *Arnstein* v. *United States* (296 Fed. 946); *Gray* v. *Pentland* (2 Sergeant & Rawle's (Pa.), 23, 28); *Thompson* v. *German Valley R. Co.* (22 N. J. Equity 111); *Worthington* v. *Scribner* (109 Mass. 487); *Appeal of Hartranft* (85 Pa. 433, 445); *2 Burr Trials* (533–536); see also 25 Op. A. G. 326.

"In *Kilbourn* v. *Thompson*, supra, the Court said:

" 'It is believed to be one of the chief merits of the American system of written constitutional law that all the powers intrusted to government, whether State or National, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.'

"In *Appeal of Hartranft*, supra, the Court said:

"'* * * We had better at the outstart recognize the fact that the executive department is a coordinate branch of the Government, with power to judge what should or should not be done, within its own department, and what of its own doings and communications should or should not be kept secret, and that with it, in the exercise of these constitutional powers, the courts have no more right to interfere than has the executive, under like conditions, to interfere with the courts.'"

The information here involved was collected, and is chiefly valuable, for use by the executive branch of the Government in the execution of the laws. It can be of little, if any, value in connection with the framing of legislation or the performance of any other constitutional duty of the Congress. We do not undertake to investigate strikes as to their justification or the lack of it, but confine investigation to alleged violations of law, including, of course, violation of statutes designed to suppress subversive activity, and to general intelligence to guide executive policy. Certainly, the evil which would necessarily flow from its untimely publication would far outweigh any possible good.

"I am not unmindful of your conditional suggestion that your counsel will keep this information 'inviolate until such time as the committee determines its disposition.' I have no doubt that this pledge would be kept and that you would weigh every consideration before making any matter public. Unfortunately, however, a policy cannot be made anew because of personal confidence of the Attorney General in the integrity and good faith of a particular committee chairman. We cannot be put in the position of discriminating between committees or of attempting to judge between them and their individual members, each of whom has access to information once placed in the hands of the committee.

"Of course, where the public interest has seemed to justify it, information as to particular situations has been supplied to congressional committees by me and by former Attorneys General.

For example, I have taken the position that committees called upon to pass on the confirmation of persons recommended for appointment by the Attorney General would be afforded confidential access to any information that we have—because no candidate's name is submitted without his knowledge and the Department does not intend to submit the name of any person whose entire history will not stand light. By way of further illustration, I may mention that pertinent information would be supplied in impeachment proceedings, usually instituted at the suggestion of the Department and for the good of the administration of justice.

"It is for the reasons given that I feel it my duty to decline your request, believing that in them you will find justification for my refusal.

"Respectfully,

"ROBERT H. JACKSON."

APPENDIX B

(Excerpt from House Report 1595, part No. 2, House Joint Resolution 342, 80th Congress, 2d session, March 30, 1948, "Answer to Minority Report," entitled: "Directing All Executive Departments and Agencies of the Federal Government To Make Available to Any and All Standing, Special, or Select Committees of The House of Representatives and the Senate, Information Which May Be Deemed Necessary to Enable Them To Properly Perform the Duties Delegated to Them by the Congress:")

THE RIGHT OF CONGRESS

As heretofore pointed out, the law which governs us is the common law, the Constitution, and the acts of the Congress as interpreted by the courts.

Notwithstanding the present trend of the executive departments to make rules and regulations and to give to them the authority of law, those rules and regulations are recognized only as they have a foundation on some act of Congress. Nor have we, as yet, given to the opinions of either the Executive or the Attorney General the force of law or of a rule or Executive order based upon an act of Congress.

Keeping this truism and the judicial decisions in mind, it must be admitted that the Congress has the power to require the Executive and the executive departments to give it the information necessary to enable it to carry on its constitutional functions.

The United States Supreme Court in the case of *McGrain* v. *Daugherty* (273 U. S. 135, decided in 1927), among other things, said:

"We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified. Both Houses of Congress took this view of it early in their history—the House of Representatives with the approving votes of Mr. Madison and other members whose service in the Convention which framed the Constitution gives special significance to their action—and both Houses have employed the power accordingly up to the present time. The

acts of 1798 and 1857, judged by the comprehensive terms, were intended to recognize the existence of this power in both Houses and to enable them to employ it 'more effectually' than before. So, when their practice in the matter is appraised according to the circumstances in which it was begun and to those in which it has been continued, it falls nothing short of a practical construction, long continued, of the constitutional provisions respecting their powers and therefore should be taken as fixing the meaning of those provisions, if otherwise doubtful.

"We are further of opinion that the provisions are not of doubtful meaning, but, as was held by this Court in the cases we have reviewed, are intended to be effectively exercised and therefore to carry with them such auxiliary powers as are necessary and appropriate to that end. While the power to exact information in aid of the legislative function was not involved in those cases, the rule of interpretation applied there is applicable here. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two Houses are intended to include this attribute, to the end that the function may be effectively exercised."

With regard to the Senate resolution involved, the Court further said:

"It is quite true that the resolution directing the investigation does not in terms avow that it is intended to be in aid of legislation; but it does show that the subject to be investigated was the administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers—specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers and duties of the Attorney General, and the duties of his assistants are all subject to regulation by congressional legislation and that the Department is maintained and its activities are carried on under such appropriations as in the judgment of Congress are needed from year to year.

The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we think the subject

matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better but in view of the particular subject matter was not indispensable."

Since the decision in *McGrain* v. *Daugherty*, the authority of congressional committees to obtain information from the executive departments has been consistently upheld.

In *Townsend* v. *U. S.* (App. D. C. 1938) 95 F. (2d) 352, February 7, 1938, cert. den. (1938) 303 U. S. 664), the court pointed out that in light of *McGrain* v. *Daugherty, supra*, a legislative purpose would be presumed, and that "power to conduct a hearing for legislative purposes is not to be measured by recommendations for legislation or their absence."

In *U. S.* v. *Bryan* (72 Fed. Supp. 58 (May 21, 1947), p. 61), the court said:

"Manifestly, the sole purpose for which the Congress may carry on investigations and secure information is in connection with the exercise of its legislative function and with the appropriation of moneys.

* * * * * * *

"In connection with the exercise of these powers, however, the Congress is not limited to securing information precisely and directly bearing on some proposed measure, the enactment of which is contemplated or considered. The collection of facts may cover a wide field. Obviously, in order to act in an enlightened manner, it may be necessary and desirable for the Congress to become acquainted not only with the precise topic involved in prospective legislation but also with all matters that may have an indirect bearing on the subject."

In *U. S.* v. *Dennis* (72 Fed. Supp. 417 (June 13, 1947)), the court said:

"The necessity for investigation and inquiry into matters affecting, or which may affect, our Government is one of prime importance. In *McGrain* v. *Daugherty* (273 U. S. 135, 174, 47 S. Ct. 319, 328, 71 L. ed. 580, 50 A. L. R. 1), the Court stated: 'We are of the opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified.' "

In *Fields* v. *U. S.* (Oct. 27, 1947 (App. D. C. 1947), 164 F. (2d) 97, cert. den. (1948), 16 L. W. 3216), the court said:

"A legislative committee of inquiry vested with power to summon witnesses and compel the production of records and papers is an institution rivaling most legislative institutions in the antiquity of its origin. One of the earliest instances of the exercise of this power is found in Sir Francis Goodwin's case in 1604, wherein authority was delegated to a parliamentary committee to summon particular witnesses and to require the production of records. Prior to the adoption of our Constitution colonial assemblies frequently assumed authority to punish for contempt any person who refused to appear in answer to a summons or who failed to disclose information required for the effective administration of government. After the Constitution was adopted Congress assumed this power. In 1792 it appointed an investigating committee "to call for such persons, papers, and

records, as may be necessary to assist their inquiries." From that date to 1929 Congress authorized over 300 investigations to assist the performance of its several functions. Since that time Congress has made abundant use of investigating committees, a natural consequence of the expanding scope of legislative concern with administration."

In *U. S.* v. *Josephson* ((C. C. A. 2d, 1947) 165 F. (2d) 82, December 9, 1947, cert. den. (1948) 16 L. W. 3253), the appellate court remarked:

"It is, of course, well settled that Congress may make investigations in aid of legislation. (E. g., *McGrain* v. *Daugherty*, 273 U. S. 135, 174, 47 S. Ct. 319, 71 L. ed. 580, 50 A. L. R. 1; *United States* v. *Norris*, 300 U. S. 564, 573, 57 S. Ct. 535, 81 L. ed. 808.) And it is immaterial that in the past this particular committee has proposed but little legislation * * *. Information gained by a committee of this nature, provided its search for the truth may not be frustrated by such obstructive tactics as those employed by the appellane, might well aid Congress in performing its legislative duties, viz, in deciding that the public welfare required the passage of new statutes or changes in existing ones or that it did not."

The trend of more recent unreported decisions has been to uphold the power of the Congress to require the executive departments to give the information sought.

ABUSE OF POWER

The argument so often made, and which undoubtedly will be renewed in the debate of this resolution, that congressional committees will abuse the power, if it be granted, has been adequately answered by the statement of the Court in *McGrain* v. *Daugherty* ((1927) 273 U. S. 135).

The Court said:

"The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, *may be abusively and aggressively exerted.* If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither House will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses. But if, contrary to this assumption, controlling limitations or restrictions are disregarded, the decisions in *Kilbourn* v. *Thompson* and *Marshall* v. *Gordon* point to admissible measures of relief. And it is a necessary deduction from the decisions in *Kilbourn* v. *Thompson* and *In re Chapman* that a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry." [Italics supplied.]

The contention made on page 4 of the committee report (H. Rept. 1595) is here renewed. The Executive office is created by the Constitution. Over the Executive himself and his acts, while within the limits of his constitutional power, the Congress has no jurisdiction. It seeks none. The executive departments, which were created by some act of Congress, which depend for their continued existence upon legislative appropriations, are in an entirely different category. It is axiomatic that that which the Congress creates, it may destroy or regulate.

That line of reasoning was recognized by the United States Supreme Court in the Daugherty case, when it said:

"Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers and duties of the Attorney General, and the duties of his assistants are all subject to regulation by congressional legislation and that the Department is maintained and its activities are carried on under such appropriations as in the judgment of Congress are needed from year to year."

Both the majority (p. 3) and the minority (p. 12) reports referred to the refusal of John R. Steelman, an assistant to the President, to appear before a subcommittee of the House Committee on Education and Labor in answer to a subpena served upon him personally. Mr. Steelman, as reason for his failure to appear, in his letter [1] stated that the President had directed him not to appear.

In view of the fact that section 192 of title 2 of the United States Code [1] does not excuse any individual from answering process issued by a congressional committee, it was Mr. Steelman's duty to appear before the subcommittee. The President had no authority to write an exemption or proviso into the law.

Mr. Steelman should have appeared and if, when questions were put, it appeared that the matter was confidential, undoubtedly he would have been excused from testifying. Had the subcommittee sought to force him to make answer to improper questions, he might then have claimed his privilege.

The same rule of law, the same procedure available to courts to compel the attendance of witnesses and the giving of testimony, are available to congressional committees. The recognized procedure in courts is for the witness to appear, and if he, because of a privilege recognized by the law, cannot be required to answer, that privilege is to be claimed by the witness or by the individual in whose behalf it exists.

The judicial decisions uphold the right of the Congress to the authority sought by the adoption of the pending resolution. Logic and reason are to the same effect.

The resolution should be adopted.

Respectfully submitted.

CLARE E. HOFFMAN.

ADDITIONAL VIEWS OF HON. GEORGE MEADER

I am in complete sympathy with what I understand to be the objective of H. R. 2767; namely, to prevent officials in the departments in the executive branch of the Government from withholding information from the public or limiting the availability of records to the public on the basis of section 161 of the Revised Statutes popularly known as a housekeeping statute.

My position is founded upon the proposition that in a democracy where ultimate decisions are made by the sovereign people, complete and accurate information about the public business is required.

H. R. 2767 is recognized by all to be too weak and inadequate to halt the tendency of officials in the executive branch of the Government, regardless of the administration in power, to keep from the public full and accurate information about their activities and the exercise of authority vested in them. Much more needs to be done than H. R. 2767 can accomplish. Nevertheless, H. R. 2767 is a step in the right direction.

I believe there is unanimous sentiment in the Government Operations Committee on the following points:

1. That departments and agencies of the Government have construed section 161 of the Revised Statutes to authorize them to withhold information from the public and to limit the availability of records to the public.

2. That this interpretation is a strained and erroenous interpretation of the intent of Congress in section 161 of the Revised Statutes which merely authorized department heads to make regulations governing day-to-day operation of the department—a so-called housekeeping function; and that section 161 of the Revised Statutes was not intended to deal with the authority to release or withhold information or records.

3. That departments henceforth should be prevented from relying upon section 161 of the Revised Statutes as authority for denying access to records or information, but that authority derived from any other sources, such as the Constitution, statutes, or Executive orders, to withhold information or limit the availability of records would not in any way be affected by the language of H. R. 2767.

The problem before the committee is merely one of draftsmanship, of language which will clearly and unambiguously declare congressional intent.

H. R. 2767 as presently written fails to express clearly the policy agreed upon and could give rise to misinterpretation by the courts as well as officials in the executive branch of the Government.

I think it is incumbent upon legislators in passing laws to use language which is clear in its meaning and avoid uncertainty in the effect of the laws they pass. Skillful draftsmanship can render unnecessary expensive litigation and delay in securing a court interpretation.

The question has been raised that the language of H. R. 2767 might be interpreted to mean that officials in the departments in the executive branch of the Government are not authorized to withhold information, thus are prohibited from withholding information and hence are required to make it available to the public. Such an interpretation obviously goes far beyond anything the committee or the Congress intends and would open all departmental files to the public. Whether such an interpretation would be a strained one or not, it seems to me it is incumbent upon us in drafting the language to eliminate any possibility that H. R. 2767 might be held, as the latest pronouncement of the Congress, to repeal or modify statutes, other than section 161 of the Revised Statutes, under which the withholding of information from the public is authorized.

To avoid such possible misconstruction of congressional intent I suggest the following:

AMENDMENT TO H. R. 2767

Strike out "by" in line 4 and all that follows down through the end of line 7 and insert in lieu thereof the following:

> by striking out the period at the end of the section and inserting in lieu thereof a colon and the following: "*Provided*, That no regulation shall be prescribed under this section authorizing or directing the withholding of information from the public or limiting the availability of records to the public."

GEORGE MEADER.

○

Union Calendar No. 574

85TH CONGRESS
2D SESSION

H. R. 2767

[Report No. 1461]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1957

Mr. Moss introduced the following bill; which was referred to the Committee on Government Operations

MARCH 6, 1958

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Union Calendar No. 574

85TH CONGRESS
2D SESSION

H. R. 2767

[Report No. 1461]

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To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

By Mr. Moss

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H. R. 2767

HOUSE

16. PRICE SUPPORTS. The Agriculture Committee ordered reported with amendment S. J. Res. 162, to prohibit any reduction in price supports or acreage allotments for any commodity, except tobacco, below 1957 levels (p. D220). It is understood that the committee agreed to an amendment limiting the measure to one year. Reps. McCormack, Albert, and Halleck discussed the date for calling up the measure, and Rep. McCormack stated that it could be considered this week (pp. 4052-3).

17. WILDLIFE. Passed without amendment H. R. 10679, to allow the Secretary of the Interior to use funds available under the Migratory Bird Hunting Stamp Act to acquire by lease, purchase, or exchange, small wetland and pothole areas to be designated as "Waterfowl Production Areas." p. 4054
By unanimous consent recommitted a similar bill, H. R. 10803, to the Merchant Marine and Fisheries Committee. p. 4054

18. FOREST SERVICE. The Agriculture Committee reported with amendment H. R. 7953, to facilitate and simplify the work of the Forest Service, with the deletion of Section 8, which would have required forest road and trail users to pay maintenance costs for such roads (H. Rept. 1505). p. 4083

19. TOBACCO. The Agriculture Committee reported without amendment H. R. 11058 to reduce the acreage allotments of tobacco farmers who harvest more than one crop of tobacco in a year from the same acreage (H. Rept. 1506). p. 4083

20. MEATPACKERS. The Interstate and Foreign Commerce Committee reported with amendment H. R. 11234, to vest in the FTC jurisdiction over meatpacker trade practices in selling other produce than livestock or poultry (H. Rept. 1507). p. 4083

21. CORN. At the request of Rep. Ford, passed over H. R. 10316, to exclude Ottawa County, Mich., from the commercial corn-producing area during 1958. p. 4053

22. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment S. 1031, to construct and maintain four units of the Greater Wenatchee project, Wash. (H. Rept. 1504). p. 4083

23. INFORMATION. Struck from the Consent Calendar, at the request of Rep. Byrnes, Wis., H. R. 2767, to restrict the authority of Federal officers and agencies to withhold information and limit the availability of records. p. 4058

24. UNEMPLOYMENT. Several Reps. discussed unemployment and the economic situation (pp. 4052, 4061-2, 4075-9, 4082). Rep. Christopher contended that the source of new wealth was the producer of raw materials, including the farmer, and that the decline in farm income was a factor in promoting recession (pp. 4076-7)

25. PERSONNEL; SECURITY. Rep. Walter inserted correspondence with the League of Women Voters in which he urged the adoption of S. 1411, which makes all Government jobs sensitive insofar as security is concerned. pp. 4059-60

26. SMALL BUSINESS LOANS. Rep. Coffin spoke on the value of Small Business Administration loans in granting help in any disaster areas. pp. 4062-3

27. TRADE AGREEMENTS. Rep. Bailey criticized the Commerce Department for making surveys of Congressional districts to determine the importance of imports and exports to the economy of such districts, and asserted that the estimates of jobs linked to exports was exaggerated. pp. 4066-7

28. BUDGETING. Received from the President proposed budget amendments, including $125,250,000 for Civil Functions of the Defense Department and $26,200,000 for the Department of Health, Education, and Welfare (H. Doc. 354); to Appropriations Committee. p. 4083

ITEMS IN APPENDIX

29. RURAL DEVELOPMENT. Extension of remarks of Sen. Potter inserting an editorial, "Resource Development Aids Farming, Industry in Michigan's Upper Peninsula," and stating that "this article reflects the clear recognition of the need for a broad program for areas that need increased incomes for farm families." p. A2425

30. DAIRY PRODUCTS. Sen. Proxmire inserted a letter from the president of a Wisc. bank which states that businessmen are strongly opposed to reduction of the price supports for dairy commodities. p. A2426

31. FARM PROGRAM. Rep. Coad inserted an editorial, "The Farm Subsidy Myth," which states that "no matter how many times it is disproved, the myth persists that farm subsidies are costing the Nation about $5 billion a year." p. A2442

Rep. Alger inserted an editorial defending the Secretary's proposal for farm policy. pp. A2442-3

Extension of remarks of Rep. Hiestand in defense of the Secretary and stating that "rarely has a Cabinet member been vilified as much as Ezra Taft Benson." p. A2469

Extension of remarks of Rep. Curtis, Mo., inserting excerpts from an article discussing the disbandment of the Iowa unit of the Nat'l Farm Organization. p. A2474

Rep. Frelinghuysen inserted an editorial, "Ezra's Our Hope." p. A2477

Extension of remarks of Rep. Gwinn stating that "in my judgment, there is no farm problem -- there is the problem of Government and what it has done to the farmer," and inserting an editorial, "Let's Set The Farmer Free.: pp. A2486-7

Extension of remarks of Rep. Curtis, Mo., in support of the administration's farm program and inserting data, "Nineteen Hundred and Fifty-eight Farm Facts." pp. A2487-9

32. TEXTILES. Rep. McIntire inserted William F. Sullivan's, secretary of the Northern Textile Ass'n, statement outlining the economic problems of the cotton textile industry. pp. A2445-6

33. WOOL. Sen. Dworshak inserted an article describing the important contribution to the economy of Idaho made by the sheep industry. pp. A2455-6

BILLS INTRODUCED

34. SURPLUS FOOD. S. 3501, by Sen. Proxmire, to authorize the Secretary of Agriculture to expend funds appropriated for the diversion of surplus farm commodities to provide balanced diets in schools and institutions and for needy families; to Agriculture and Forestry Committee. Remarks of author. p. 4001

set forth in such legislation, so long as any of the bonds are outstanding.

(d) Nothing in this act shall be deemed to prevent the application of Federal funds to aid in the retirement of said bonds, to the extent now or hereafter permitted by the acts of Congress relating to the use of such funds.

(3) As used in this act, the term "aviation fuel taxes" shall have the same meaning as is now or hereafter ascribed to it by the laws of the Territory of Hawaii.

(f) Joint resolution 32 of the session laws of Hawaii, 1957, as amended by subsection (a) hereof, is hereby approved and ratified.

SEC. 3. The Secretary of the Navy is authorized to convey without reimbursement, to the Territory of Hawaii, all of the right, title, and interest of the United States in and to those portions of the former naval air facility, Honolulu, and the general supply depot, Damon Tract, naval supply center, Pearl Harbor, comprising an area of 77 acres, more or less, and described as follows:

LAND SITUATE AT MOANALUA, HONOLULU, OAHU, T. H.

Being lot 35, area 12.973 acres, as shown on map 77, and lot 36–B, area 63.678 acres, as shown on map 144, said maps having been filed with the assistant registrar of the land court of the Territory of Hawaii in land court application No. 1074 of the trustees under the will and of the estate of Samuel M. Damon, deceased. Said lot 35 being the land described in transfer certificate of title No. 38090, and lot 36–B being a portion of the land described in transfer certificate of title No. 38094, both issued to the United States of America.

Together with any or all improvements or utilities thereon or used in connection therewith.

SEC. 4. The Secretary of the Air Force is authorized to convey without reimbursement, to the Territory of Hawaii, all of the right, title, and interest of the United States in and to that portion of Hickam Air Force Base, Honolulu, comprising an area of 170 acres, more or less, and described as follows:

A PORTION OF HICKAM AIR FORCE BASE

Being a portion of Hickam Field, United States Military Reservation (portion of parcel III, final order of condemnation, United States of America civil No. 289 dated April 9, 1935). Being also a portion of R. P. 7858 land court award 7715 Apana 2 to Lot Kamehameha and a portion of grant 4776 to Samuel M. Damon.

LAND SITUATE AT MOANALUA, HONOLULU, OAHU, T. H.

Beginning at the northeast corner of this piece of land, on the west side of John Rodgers-Keehi Lagoon Access Road, Hawaii project DA–NR 10–B (1), and on the south side of lot C–4–B–1, map 136 of land court application 1074, the true azimuth and distance from the southeast corner of said lot C–4–B–1 being 97 degrees 20 minutes 15.99 feet, and the coordinates of said point of beginning referred to Government survey triangulation station "Salt Lake" being 10,524.00 feet south and 5,894.95 feet west, thence running by azimuths measured clockwise from true south:

SOUTH

1.00 degrees 00 minutes 626.01 feet along lot C–6, map 74 of land court application 1074, along Territoriai law numbered 17194;

2.00 degrees 00 minutes 563.79 feet along lot 36, map 77 of land court application 1074, along United States civil numbered 527;

3.349 degrees 19 minutes 24 seconds 3,178.18 feet along present Honolulu International Airport, Governor's executive order No. 1016;

4.90 degrees 03 minutes 20 seconds 1,922.84 feet along the remainder of Hickam Air Force Base to a pipe;

5.180 degrees 03 minutes 20 seconds 1,760.25 feet along same to a spike in pavement;

6. 90 degrees 03 minutes 20 seconds 400.00 feet along same to a pipe;

7. 180 degrees 03 minutes 20 seconds 1,908.49 feet along same to a spike in pavement;

8. 276 degrees 29 minutes 450.90 feet along same to a spike in pavement;

9. 186 degrees 29 minutes 851.01 feet along same;

10. 277 degrees 20 minutes 1,196.15 feet along lot C–4–B–1, map 136 of land court application 1074, along United States civil numbered 436 to the point of beginning and containing an area of 170.990 acres.

Together with any or all improvements or utilities thereon or used in connection therewith.

SEC. 5. The Governor of the Territory of Hawaii is authorized to convey without reimbursement to the United States all of the right, title, and interest of the Territory of Hawaii in and to that portion of the Honolulu International Airport, comprising an area of 174 acres, more or less, and described as follows:

LAND SITUATE AT MOANALUA, HONOLULU, OAHU, T. H.

Being a portion of the Honolulu International (formerly John Rodgers) Airport as described in and set aside by the Governor of the Territory of Hawaii by executive order numbered 1016, and being also a portion of the land as described in and title transferred to the Territory of Hawaii by Presidential Executive Order Numbered 10121.

Beginning at the westerly corner of this tract of land, being also a point in common on the converging boundaries of Hickam Field and Fort Kamehameha Military Reservations, the coordinates of said point of beginning referred to Government survey triangulation station "Salt Lake" being 16,874.10 feet south and 5,896.30 feet west, and running by azimuths measured clockwise from true south:

1. 228 degrees 49 minutes 0.35 foot along Hickam Field, United States Military Reservation (United States civil No. 289), being along parcel 2 of proposed Navy seadrome area;

2. 244 degrees 22 minutes 33.00 feet along same;

3. 231 degrees 55 minutes 30 seconds 298.50 feet along same;

4. 222 degrees 20 minutes 30 seconds 401.40 feet along same;

5. 212 degrees 53 minutes 139.80 feet along same;

6. 207 degrees 57 minutes 30 seconds 222.80 feet along same;

7. 201 degrees 40 minutes 104.87 feet along same;

8. 233 degrees 00 minutes 878.84 feet along the remainder of Honolulu International Airport, being a portion of reclaimed lands transferred to the Territory of Hawaii by Presidential Executive Order No. 10121;

9. 270 degrees 00 minutes 3,607.69 feet along same, along the remainder of area 3 as reserved for purposes of the United States of America in Presidential Executive Order No. 10121, to highwater mark at seaplane docking basin; thence along the seaplane docking basin and seaplane runway "A" following along highwater mark for the next three courses the direct azimuth and distance between points at said highwater mark being:

10. 52 degrees 30 minutes 1,871.69 feet;

11. 16 degrees 00 minutes 767.64 feet;

12. 52 degrees 59 minutes 05 seconds 1,722.70 feet;

13. 110 degrees 00 minutes 414.47 feet along the remainder of Honolulu International Airport; along the remainder of Moanalua fishery (Territory of Hawaii final order of condemnation law No. 16653) to a point on the easterly boundary of Fort Kamehameha United States Military Reservation;

14. 216 degrees 30 minutes 421.10 feet along Fort Kamehameha United States Military Reservation, and along area 9 of the United States Naval Reservation;

15. 163 degrees 00 minutes 260.00 feet along area 9 of the United States Naval Reservation (formerly portion of Fort Kamehameha United States Military Reservation);

16. 105 degrees 44 minutes 1,607.00 feet along same, and along Fort Kamehameha United States Military Reservation;

17. 143 degrees 45 minutes 389.25 feet along Fort Kamehameha United States Military Reservation to the point of beginning and containing an area of 174 acres, more or less.

Together with access thereto and easements for utilities to be used in connection therewith.

SEC. 6. The Governor of the Territory of Hawaii is authorized to convey without reimbursement to the United States all of the right, title, and interest which the Territory may have in and to those portions of the Halawa and Moanalua fisheries, and the submerged lands subjacent thereto, comprising an area of 156 acres, more or less, and described as follows:

Being a portion of Moanalua fishery (Governor's executive order No. 1016) and a portion of Halawa fishery.

SITUATE AT MOANALUA, HONOLULU, AND HALAWA, EWA, OAHU, T. H.

Beginning at the northeasterly corner of this piece of land, on the easterly side of Fort Kamehameha Military Reservation, the coordinates of said point of beginning referred to Government survey triangulation station "Salt Lake" being 18,210.90 feet south and 4,293.81 feet west, thence running by azimuths measured clockwise from true south:

1. 290 degrees 00 minutes 414.49 feet along the remainder of Moanalua fishery (Governor's executive order No. 1016);

2. 52 degrees 59 minutes 05 seconds 2,503.69 feet along same;

3. 110 degrees 00 minutes 7,986.50 feet along same;

4. 110 degrees 00 minutes 957.00 feet along the remainder of Halawa fishery; thence along shoreline, along Fort Kamehameha Military Reservation for the next 19 courses, the direct azimuths and distances from point to point along said shoreline being:

5. 270 degrees 35 minutes 20 seconds 225.02 feet;

6. 280 degrees 05 minutes 40 seconds 290.85 feet;

7. 257 degrees 50 minutes 239.14 feet;

8. 243 degrees 05 minutes 142.51 feet;

9. 233 degrees 12 minutes 92.13 feet to Kamumau;

10. 268 degrees 46 minutes 1,342.70 feet;

11. 285 degrees 45 minutes 1,560.00 feet;

12. 301 degrees 53 minutes 1,208.00 feet;

13. 287 degrees 00 minutes 30 seconds 311.80 feet;

14. 290 degrees 41 minutes 980.80 feet;

15. 298 degrees 23 minutes 30 seconds 797.00 feet;

16. 293 degrees 26 minutes 768.70 feet;

17. 318 degrees 40 minutes 498.20 feet;

18. 278 degrees 48 minutes 494.10 feet;

19. 268 degrees 30 minutes 568.80 feet;

20. 256 degrees 00 minutes 360.00 feet;

21. 187 degrees 00 minues 235.00 feet;

22. 232 degrees 00 minutes 790.00 feet;

23. 216 degrees 30 minutes 318.90 feet to the point of beginning and containing an area of 156.844 acres, more or less.

Together with access thereto and easements for utilities to be used in connection therewith.

SEC. 7. The Governor of the Territory of Hawaii is authorized to convey without reimbursement to the United States all of the right, title, and interest which the Territory may have in and to those portions of the Halawa and Moanalua fisheries, and the submerged lands subjacent thereto, comprising an area of 344 acres, more or less, and described as follows:

Being a strip of land 1,000 feet wide and 15,000 feet long, and being a portion of Moanalua fishery (Governor's executive order No. 1016) and a portion of Halawa fishery.

Situated offshore of Moanalua, District of Honolulu, and Halawa, District of Ewa, Oahu, Territory of Hawaii. Beginning at the most easterly corner of this piece of land, on the southeasterly side and offshore of Fort Kamehameha Military Reservation, the true azimuth and distance from the most southerly corner of proposed Navy seaplane base being 329 degrees 35 minutes 51 seconds 4,029.15 feet, the coordinates of said point of beginning referred to Government survey triangulation station "Salt Lake" being 21,827.75 feet south and 1,865.30 feet west, thence running by azimuths measured clockwise from true south:

1. 19 degrees 00 minutes 1,000.00 feet along the remainder of Moanalua fishery (Governor's executive order No. 1016);

2. 109 degrees 00 minutes 15,000.00 feet along same and along the remainder of Halawa fishery;

3. 199 degrees 00 minutes 1,000.00 feet along the remainder of Halawa fishery;

4. 289 degrees 00 minutes 15,000.00 feet along same and along the remainder of Moanalua fishery (Governor's executive order No. 1016) to the point of beginning and containing an area of 344.353 acres.

With the following committee amendments:

Page 2, line 11, strike the words "or carriers" and insert "for carriers."

Page 2, strike the sentence appearing on lines 12 to 16, inclusive, and insert the following sentences in lieu thereof: "No such lease shall continue in effect for a longer term than 55 years. If, at the time of the execution of any such lease, the Governor shall have approved the same, then and in that event the Governor shall have no further authority under this or any other act to set aside any or all of the lands subject to such lease for any other public purpose during the term of such lease."

Page 2, line 20, change the period to a comma and add the words "and by striking the words 'first session.'"

Page 4, line 12, strike the figure "(3)" and insert in lieu thereof the letter "(e)."

Page 6, line 2, strike the word "court" and insert the word "commission."

Page 10, line 16, strike the words "172.212 acres." and insert the words "174 acres, more or less."

Page 12, line 2, strike the word "Kamumau;" and insert the word "Kumumau;".

Page 13, line 16, strike the figure "21,827.75" and insert the figure "21,827.76."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING HAWAIIAN ORGANIC ACT RELATING TO TRANSFER OF THE TITLE OF CEDED LAND BY THE PRESIDENT

The Clerk called the bill (H. R. 9543) to provide for the conveyance of certain real property used by the University of Hawaii to the board of regents of such university, for the use and benefit of such university.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is authorized and directed to convey, without consideration therefor, to the board of regents of the University of Hawaii, for the use and benefit of such university, all rights, title, and interest of the United States in and to the lands of the United States which are being devoted to the use and benefit of such university on the date of enactment of this act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following: "That section 91 of the Hawaiian Organic Act (31 Stat. 159), as amended (48 U. S. C. 511), is amended further by inserting after the words "other political subdivision thereof" a comma and the words "or the University of Hawaii,".

"SEC. 2. Joint Resolution 5 of the Session Laws of Hawaii, 1957, shall be construed as authorization by the legislature for the transfer of title by direction of the Governor to the University of Hawaii of any lands title to which may be transferred to the Territory by direction of the President for educational institutions under the provisions of said section 91 of the Hawaiian Organic Act, as amended."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Hawaiian Organic Act relating to the transfer of the title of ceded land by the President."

A motion to reconsider was laid on the table.

YUMA IRRIGATION DISTRICT, ARIZONA

The Clerk called the bill (S. 2037) to amend the act of June 28, 1946, authorizing the performance of necessary protection work between the Yuma project and Boulder Dam by the Bureau of Reclamation.

Mr. BYRNES of Wisconsin. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

AMENDMENT OF SECTION 161 OF REVISED STATUTES

The Clerk called the bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Mr. BYRNES of Wisconsin. Reserving the right to object, Mr. Speaker, I cannot understand why this particular bill was put on the Consent Calendar in view of the fact that the committee itself filed a minority report. I therefore ask unanimous consent that it be stricken from the calendar.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PETRIFIED FOREST NATIONAL PARK, ARIZ.

The Clerk called the bill (H. R. 8250) to authorize the establishment of the Petrified Forest National Park in the State of Arizona, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That in order to permit the establishment of the Petrified Forest National Monument, Ariz., and other lands as provided for herein, as the Petrified Forest National Park, such national park shall be established (a) after title to all of the lands described in section 2 of this act shall have been vested in the United States, with the exception of such easements and rights-of-way for railroad, and highway purposes as may be acceptable to the Secretary of the Interior, and (b) when notification of the effective date of such establishment of the park, as determined by the said Secretary, is published in the Federal Register. Disestablishment of the Petrified Forest National Monument shall be effected concurrently with the establishment of the park.

The Petrified Forest National Park shall be preserved and administered in its natural condition by the Secretary of the Interior for the public benefit in accordance with the general laws governing areas of the National Park System and in accordance with the basic policies relating thereto as prescribed by the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., 1592 edition, secs. 1–3).

The exchange authority prescribed for the Petrified Forest National Monument in the act of May 14, 1930 (46 Stat. 278; 16 U. S. C., 1952 edition, secs. 444, 444a), is hereby extended to all the lands within the Petrified Forest National Park as herein authorized.

For the purposes of this act, the Secretary is authorized to acquire, in such manner as he shall consider to be in the public interest, any non-Federal land or interests in land within the area hereby authorized to be established as the Petrified Forest National Park. In acquiring any State-owned land or interests therein within the aforesaid area, such property may be procured by the United States without regard to any limitations heretofore prescribed by the Congress relating to the disposal of State-owned properties.

Upon establishment of the Petrified Forest National Park, as authorized by this act, any remaining balance of funds that may be available for purposes of the Petrified Forest National Monument shall thereafter be available for expenditure for purposes of the Petrified Forest National Park.

SEC. 2. The Petrified Forest National Park, authorized to be established pursuant to section 1 of this act, shall comprise the following described lands:

GILA AND SALT RIVER MERIDIAN

Township 20 north, range 23 east; Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26 27, 34, 35, 36, all.

Township 20 north, range 24 east: All.

Township 20 north, range 25 east: Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, all.

Township 19, north, range 23 east: Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, all.

Township 19 north, range 24 east: Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, all; section 11, northwest quarter and north half northeast quarter; sections 16, 17, 18, 21, 28, 33, all.

Township 18 north, range 24 east: Sections 4, 9, 10 (southwest quarter), 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued April 3, 1958
For actions of April 2, 1958
85th-2d, No. 54

CONTENTS

HIGHLIGHTS: House received conference report on road authorization bill. House subcommittee ordered reported bill to increase durum wheat acreage allotments in Tule Lake area, Calif. Sen. Murray criticized operation of the rural development program. Sen. Flanders and Rep. Hays, Ark., introduced and Sen. Flanders discussed bills to establish Commission on Country Life.

HOUSE

1. ROADS. Received the conference report on H. R. 9821, the road authorization bill (H. Rept. 1591). pp. 5483-88, 5522

The revised bill includes provisions as follows: Authorizes an additional $5 million for forest highway systems in the fiscal year 1959, and $33 million for each of the fiscal years 1960 and 1961; authorizes an additional $5 million for forest development roads and trails for the fiscal year 1959, and $30 million for each of the fiscal years 1960 and 1961; provides that advisory public hearings on any proposed construction or reconstruction of timber-access roads shall be permissive rather than compulsory; provides that the apportionment of funds for forest highways for fiscal 1959, 1960, and 1961 shall be made on the same basis that it was in the fiscal year 1958; provides that a State may transfer not to exceed the lesser of $500,000 or 5 percent of the amount apportioned to it under the first section of the bill (relating to apportionments for the ABC system) to augment its apportionment for forest highways and when transferred such sums may be expended as any other funds authorized for forest highway purposes; and requires a study of needed improvements on the forest highway

system and a report thereon to Congress on or before Jan. 1, 1960, with a proviso that the Secretary of Agriculture shall be a member of the group to cooperate with the Secretary of Commerce in making the study, recommendations, and report.

2. DURUM WHEAT. The Wheat Subcommittee of the Agriculture Committee ordered reported with amendment H. R. 11092, to increase the acreage allotments for durum wheat grown in the Tule Lake area, Calif. p. D293

3. INFORMATION. Received from the Government Operations Committee a report of additional views on H. R. 2767, with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records (H. Rept. 1461). p. 5522

4. COTTON. Rep. Flynt stated that if the consumption of cotton in 1958 is below eight million bales, as estimated, "our cotton farmers and our textile mills will be seriously hurt," and inserted an article, "Recession in Textiles." pp. 5509-10

5. FOREIGN AFFAIRS. Rep. Thompson, N. J., urged support of the U. N. Educational, Scientific, and Cultural Organization as a means of promoting greater understanding among the nations. pp. 5515-18

6. LEGISLATIVE PROGRAM. Rep. Albert announced that the conference report on the road authorization bill would be considered Thurs., Apr. 3. p. 5488

SENATE

7. FLOOD CONTROL. Agreed, 52 to 11, to the conference report on S. 497, the rivers and harbors and flood control bill (pp. 5412-13, 5432, 5451-77). Sens. discussed the relation of certain provisions in the bill as reported to State water rights laws (pp. 5451-8, 5468-9, 5472-6), the standards by which such projects were approved for inclusion (pp. 5459-62, 5469-72), the distribution of electric power from such projects, including the public preference clause and a State's claim to power produced within its boundaries (pp. 5463-8), and the cost-benefit ratio (pp. 5468-9).

Received from the Chief of Engineers an interim report on the Blackstone River Basin, R. I. (S. Doc. 87). p. 5479

8. RURAL DEVELOPMENT. Sen. Murray criticized the Department's rural development program for fostering off-farm employment. pp. 5411-12

9. DAIRY PRICE SUPPORTS. Sen. Proxmire criticized the Secretary's statement on price levels and production, and inserted the analysis and suggestions of Dr. W. W. Cochrane, "Making A Dairy Program Work." pp. 5419-21

10. RETIREMENT. Senate conferees were appointed on S. 72, to increase the annuities of certain civil service annuitants. House conferees have not been appointed. pp. 5444-5

11. PUBLIC WORKS. Sen. Javits submitted an amendment to S. 3497, the community facilities loan bill to include civil defense facilities. p. 5396

Sen. Kefauver expressed regret at the postponement of S. 3497 and inserted letters from Tenn. local officials favoring passage of the bill. pp. 5406-7

85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT 1461
2d Session } { Part 2

AMENDING SECTION 161 OF THE REVISED STATUTES WITH RESPECT TO THE AUTHORITY OF FEDERAL OFFICERS AND AGENCIES TO WITHHOLD INFORMATION AND LIMIT THE AVAILABILITY OF RECORDS

APRIL 2, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOFFMAN, from the Committee on Government Operations, submitted the following

ADDITIONAL VIEWS

[To accompany H. R. 2767]

ADDITIONAL VIEWS OF CLARE E. HOFFMAN [1]

Page 19: Paragraph 5 should follow paragraph 6, immediately preceding the quotation from Mr. Rayburn.

Page 21: Line 10, "and so forth. I also said:" is a part of the quotation from Mr. McCormack.

Page 25: Line 26 should read: "Party because of publicity given their candidacies by the eastern press."

Page 31: Lines 27 and 28 should read: "True, the first amendment does state that Congress shall 'make no law * * * abridging the freedom of speech, or of the press' but none is so".

Page 33: Appendix A is an excerpt from Remarks of the Honorable John W. McCormack (Congressional Record, vol. 94, pt. 5, pp. 5713–5721).

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[1] The first four items listed are to correct Printing Office errors, and the fifth item is added for desired clarification. Unanimous consent to file these Additional Views given March 28, 1958, Congressional Record, daily copy, p. 5071.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued April 17, 1958
For actions of April 16, 1958
85th-2d, No. 58

CONTENTS

HIGHLIGHTS: See page 6.

HOUSE

1. DURUM WHEAT; SOIL BANK; LIVESTOCK LOANS. The Agriculture Committee reported H. R. 11092, with amendment, to provide increased durum wheat acreage allotments for certain counties in the Tulelake area, Calif. (H. Rept. 1607); H. R. 11424, without amendment, to extend the authority for extension of special livestock loans (H. Rept. 1609); and H. R. 10114, without amendment, to provide a more equitable treatment for producers participating in the soil bank program for previous actions taken on the basis of incorrect information furnished by this Department (H. Rept. 1606). p. 5914.

2. INFORMATION. Passed without amendment H. R. 2767, to provide that 5 U.S.C. 22 (which provides that "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.") "does not authorize withholding information from the public or limiting the availability of records to the public."pp. 5862-91

Rejected the following amendments:

By Rep. Hoffman to provide that the bill should not be construed as requiring the giving of information or the making of records available. pp. 5883-84

By Rep. Meader to provide that no regulation would be prescribed under the bill authorizing or directing the withholding of information from the public or limiting the availability of records to the public. pp. 5884-85

By Rep. Hyde, 47 to 79, to provide that the bill would not authorize withholding information from the public "in a manner not inconsistent with law." pp. 5885-88

By Rep. Griffin, 63 to 87, to provide that the bill would not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting the availability of information or records to the public. pp. 5888-89

By Rep. Hoffman to provide that the bill would not limit any constitutional privilege. p. 5889

By Rep. Hoffman to provide that the bill would not be construed as requiring the giving of information which would endanger the national security, impair Government efficiency, result in unfairness to any person, or disclose confidential sources of information to agencies or officials. p. 5889

Also rejected a motion by Rep. Hoffman to recommit the bill. p. 5890

3. SURPLUS PROPERTY. The Government Operations Committee ordered reported with amendment S. 2224, to amend the procedures on advertised and negotiated disposals of surplus property. p. D312

4. RECLAMATION. A subcommittee of the Interior and Insular Affairs Committee ordered reported with amendment H. R. 594, to authorize the construction and maintenance of the Fryingpan-Arkansas project, Colo. p. D312

5. FLOOD CONTROL. Reps. Gross, Morano, and McGregor defended, and Rep. Edmondson criticized, the President's veto of S. 497, the rivers and harbors and flood control bill. pp. 5861-62

6. FOREIGN AFFAIRS. Rep. Boggs commended the work of the Organization for European Economic Cooperation in developing the economy of Europe, and inserted a summary of its achievements during the first 10 years. pp. 5891-93

7. ECONOMIC SITUATION. Rep. Dingell discussed the current economic situation, and stated that net farm income has "dropped steadily since the advent of the present administration" and that the "middlemen's profits have grown astonishingly." pp. 5893-97

8. SMALL BUSINESS. Rep. Patman charged that small business was suffering from the "credit squeeze," and inserted tables on the change in amount of business loans of member banks to various types of businesses. pp. 5898-99

9. STATEHOOD. Rep. Saylor urged enactment of legislation to provide statehood for Alaska. pp. 5908-09

10. APPROPRIATIONS. Received from the Acting Secretary of Agriculture a report "prior to restoration of balances to the appropriation 'Salaries and expenses, Farmer Cooperative Service, 1957,' pursuant to the act of July 25, 1956 (31 U. S. C. 701-708) and the reporting requirements set forth in Bureau of the Budget Circular No. A-23, dated June 21, 1957"; to Government Operations Committee. p. 5914

House of Representatives

WEDNESDAY, APRIL 16, 1958

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D. D., offered the following prayer:

Deuteronomy 33:25: *As thy days, so shall thy strength be.*

Almighty God, grant that in these strange and strenuous times, we may constantly and confidently avail ourselves of Thy divine wisdom which does not err and the strength which does not falter.

We penitently confess that again and again we are more conscious of our perplexities than we are of Thy gracious providence.

May we not be cowardly when we ought to be courageous nor confused when we ought to be calm and never fickle when we ought to be faithful.

Help us to labor earnestly and pray fervently for the coming of that blessed day when men and nations shall give allegiance to the King of kings who rules not with the rod of iron but with the scepter of justice, righteousness, mercy, and love.

Hear us in His name. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. McGown, one of its clerks, announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 77. Concurrent resolution to extend greetings to the Federal Legislature of the West Indies.

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 1708. An act to amend the act entitled "An act relating to children born out of wedlock," approved January 11, 1951.

The message also announced that the Vice President has appointed Mr. JOHNSTON of South Carolina and Mr. CARLSON members of the Joint Select Committee on the part of the Senate, as provided for in the act of August 5, 1939, entitled "An act to provide for the disposition of certain records of the United States Government," for the disposition of executive papers referred to in the report of the Archivist of the United States numbered 58–11.

CORRECTION OF THE RECORD

Mr. CURTIS of Missouri. Mr. Speaker, I call attention to the RECORD of yesterday, page 5790, first column, part of which reads:

Mr. CURTIS of Missouri. Mr. Speaker, will the gentleman yield?

Mr. MCCARTHY. I yield to the gentleman from Missouri.

Mr. CURTIS of Missouri. Mr. Speaker, I make the point of order a quorum is not present.

The RECORD should read:

Mr. MCCARTHY. I yield to the gentleman from Minnesota.

Mr. Speaker, the reason this is significant is that also in the remarks of the gentleman from Minnesota [Mr. MCCARTHY] the RECORD does not contain the many requests I made to the gentleman to yield, which I think numbered 7 or 8, and it was only upon his failure to yield, after yielding to 3 others, that I made the motion that a quorum was not present. The RECORD as it now stands creates exactly the opposite impression. I called the gentleman from Minnesota before taking the floor to tell him I was going to make this request. He said that it was an error in the transcription and agrees that it should be corrected, as I understand, to state "the gentleman from Minnesota" in place of "the gentleman from Missouri."

Mr. Speaker, I ask unanimous consent that the RECORD be corrected accordingly.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

THE PRESIDENT'S VETO OF THE RIVERS AND HARBORS OMNIBUS BILL

(Mr. EDMONDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EDMONDSON. Mr. Speaker, there have been very few blows at the heart of water development and flood control in the United States that rank with the one which was struck yesterday by the President when he vetoed the rivers and harbors omnibus bill, which had been passed overwhelmingly by this Congress. With that veto the chances of hundreds of communities across this country to have projects that have been approved by the Army engineers, by the Bureau of the Budget, and the Congress were substantially and detrimentally affected. By that veto the will of the Congress to establish new standards that will make possible a much more effective flood control and water development program was also obstructed. By that veto the President asserted that he will not permit this Congress to legislate and work its will even to the extent of 6 percent of an omnibus bill for authorization of rivers and harbors projects in this country. By that veto the President has demonstrated that he intends to dictate policy in this field in the future unless this Congress overrides the veto, as I hope it will.

Mr. Speaker, it is difficult to understand the reasoning of a Chief Executive who asks this Congress to give him a $4 billion blank check for foreign aid, permitting him to initiate expensive foreign river and harbor projects without any congressional review whatsoever, and who then refuses to Congress its right to use its own judgment on 6 percent of a rivers and harbors bill for our own country.

This veto must be overridden by this Congress, if congressional prerogatives have any significance at all today.

SMALL BUSINESS COMMITTEE

Mr. PATMAN. Mr. Speaker, I ask unanimous consent that the House Small Business Committee may sit this afternoon and tomorrow afternoon during general debate.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

THE PRESIDENT'S VETO OF S. 497

(Mr. GROSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GROSS. Mr. Speaker, I take this time to commend President Eisenhower for vetoing S. 497, which would authorize the spending of $1.7 billion on various rivers and harbors and flood control projects.

While there are sound projects in the bill, there is no question that there are entirely too many provisions which cannot be justified on the basis of ratio of benefit to cost. In his veto message, the President properly enumerated a number of objectionable provisions, including three projects estimated to cost about $115 million, which the reports of the Corps of Engineers show have absolutely no economic justification.

The President's arguments against the bill are sound, and I am in full agreement with his views. As the record will show, I voted against S. 497 when it was before the House, for the reasons stated, and I will vote to uphold the President if an attempt is made to override the veto.

Once again, I commend him for blocking this unwarranted raid upon the taxpayers.

RIVERS AND HARBORS BILL

(Mr. MORANO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORANO. Mr. Speaker, I take exception to the remarks made by the gentleman from Oklahoma concerning the veto of the President. I believe there was much justification for the President's action. Of course, I am happy to see that the gentleman from Iowa [Mr. GROSS] is in agreement with the President, at least in this one instance. The gentleman from Iowa has ably given the reasons for the veto.

I happen to have a project in the Fourth Congressional District of Connecticut which is the Bridgeport Harbor project. This is a sound project. It is a project approved by the Chief of Engineers and by the Bureau of the Budget. It has been twice approved by this Congress and has failed of enactment because of a Presidential veto.

Today I am introducing a bill, an individual, special bill, to authorize the modification of the Bridgeport Harbor. I hope the Committee on Public Works will consider this bill and any others like it that may be introduced and take quick and favorable action on it. It is long overdue. The economy of the entire Bridgeport area is involved.

STORY OF FREE ENTERPRISE

(Mr. ALGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALGER. Mr. Speaker, years ago, I played golf with a fellow who shot consistently in the middle eighties. That is good golf by my standards and, by his standards, too, for he played for years with other 80 to 90 shooters and appeared to enjoy himself thoroughly.

One day, however, everything seemed to break right for him. He turned in a 74—a personal record.

On the following Saturday he went around in 83—really a bit better than his average score—but he immediately grumbled that he was "off his game." He is still grumbling, for I am afraid that something nearer 74 has become his notion of what is normal for him, at least when he is talking to others about it.

Could it possibly be that some of the isolated and anguished howls we hear today come from some who, having once done so, feel they should shoot a business or an economic 74, day in and day out, indefinitely?

During World War II some of us chuckled over the story of a young lieutenant, not long off the farm, who found himself riding in a Pullman for the first time. Nearing his destination, his embarrassment grew, for while he wanted to appear a man of the world, he had not the remotest idea how much to tip the Pullman porter. Being a direct young fellow, when the porter came to assist him with bags and coat, the lieutenant asked him straight out what he received, on the average, as a tip. Without batting an eye, the porter came back, "$2, suh."

Stunned, but trying desperately not to show it, the young lieutenant fished two bills out of his pocket and handed them over, at which the porter's eyes widened with respect. "Thank you, boss," he said, "you're the first gentlemen in 18 months to come up to my average."

RIVERS AND HARBORS BILL

(Mr. McGREGOR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McGREGOR. Mr. Speaker, it is not my habit to attempt to answer any of my colleagues, but I cannot help but take exception to the remarks of my good friend, the gentleman from Oklahoma [Mr. EDMONDSON] who is a member of the Committee on Public Works and who has just criticized the President for vetoing the pork barrel legislation known as the rivers and harbors bill, S. 497.

I am sure that my distinguished friend from Oklahoma recognizes now that it does not pay to put rotten apples in a barrel of good ones. Most of the projects in the bill are meritorious and were recommended according to established procedure. But what happened? Some few Members of Congress who could not get their projects recommended according to law by the Army engineers, the Secretary of Defense, and the Bureau of the Budget, insisted on putting their projects into the bill regardless of their adverse effect on the approved projects. The President could not do anything else but veto a bill of nearly a billion and a half dollars because there were approximately $349 million worth of projects in the legislation that have not been approved or recommended by the proper departments of this Government. So some of those who put in the bill their projects that were not recommended should now go to the Members whose projects were legitimate ones and humbly apologize.

CORRECTION OF RECORD

Mr. ALBERT. Mr. Speaker, I ask unanimous consent to correct the permanent RECORD with regard to pairs on rollcall No. 37, page 5081, beginning with Mr. McDONOUGH and Mr. JAMES, running through Mr. GREEN of Pennsylvania and Mr. DAWSON of Utah; also rollcall No. 39, page 5604, beginning with Mr. McCORMACK and Mr. HOEVEN, running through Mr. BURDICK and Mr. HEALEY, except the pair of Mr. DURHAM and Mr. HARRISON of Virginia, which is to be eliminated. All names appearing on the left side are for the passage of the bill, and those names appearing on the right side are against the bill. The RECORD should then show the pairs as follows:

ROLL No. 37

The Clerk announced the following pairs:
On this vote:
Mr. McDonough for, Mr. James against.
Mr. Garmatz for, Mr. Taylor against.
Mr. Arends for, Mr. Bosch against.
Mr. Wolverton for, Mr. Latham against.
Mr. Moore for, Mrs. Bolton against.
Mr. Miller of New York for, Mr. Lafore against.
Mr. Haskell for, Mr. Scott of Pennsylvania against.
Mrs. St. George for, Mr. Cramer against.
Mr. Sheppard for, Mr. Dennison against.
Mr. Engel for, Mr. Coudert against.
Mr. Roosevelt for, Mr. Chiperfield against.
Mr. Dent for, Mr. Fino against.
Mr. Keogh for, Mr. Lennon against.
Mr. Anfuso for, Mr. Alexander against.
Mr. Dollinger for, Mr. Abbitt against.
Mr. Evins for, Mr. Radwan against.
Mr. O'Brien of Illinois for, Mr. Collier against.
Mr. Yates of Illinois for, Mr. Robeson of Virginia against.
Mr. Celler for, Mr. Cunningham of Nebraska against.
Mr. Farbstein for, Mr. Ray against.
Mr. Teller for, Mr. Colmer against.
Mr. Zelenko for, Mr. Tuck against.
Mr. Allen of California for, Mr. Krueger against.
Mr. Derounian for, Mr. Reed of New York against.
Mr. Delaney for, Mr. Curtis of Missouri against.
Mrs. Kelly of New York for, Mr. Vorys against.
Mr. Fallon for, Mr. Gwinn against.
Mr. Kluczynski for, Mr. Dies against.
Mr. Walter for, Mr. Reuss against.
Mr. Healey for, Mr. Smith of Virginia against.
Mr. Buckley for, Mr. Grant against.
Mr. Green of Pennsylvania for, Mr. Dawson of Utah against.

ROLL No. 39

The Clerk announced the following pairs:
On this vote:
Mr. McCormack for, Mr. Hoeven against.
Mr. Forrester for, Mr. Coudert against.
Mr. Colmer for, Mr. Scherer against.
Mr. Abbitt for, Mr. Hess against.
Mr. Lennon for, Mr. Kean against.
Mr. Adair for Mr. Taylor against.
Mrs. Harden for, Mr. Landrum against.
Mr. Halleck for, Mr. Vinson against.
Mr. Mumma for, Mr. Celler against.
Mr. James for, Mr. Buckley against.
Mr. Becker for, Mr. Rooney against.
Mr. Wilson of California for, Mr. Dooley against.
Mr. Pilcher for, Mrs. Bolton against.
Mr. Barden for, Mr. Bow against.
Mr. Boland for, Mr. Riley against.
Mr. Passman for, Mr. Horan against.
Mr. Patman for, Mr. Dollinger against.
Mr. Rains for, Mrs. Sullivan against.
Mr. Dies for, Mr. Preston against.
Mr. Robeson of Virginia for, Mr. Holifield against.
Mr. Burdick for Mr. Healey against.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

AMENDING SECTION 161, REVISED STATUTES

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up the resolution (H. Res. 514) providing for the consideration of H. R. 2767, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records. After general debate, which shall be confined to the bill and continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. BOLLING. Mr. Speaker, before commencing debate on the rule, I wish to make a unanimous consent request. After discussion with the managers of the bill, both on the majority and on the minority side, and the leadership on both sides, I ask unanimous consent that on page 1, line 9, after the words "not to exceed" the words "one hour" be stricken and the words "two hours" be inserted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. BROWN of Ohio. Mr. Speaker, reserving the right to object, I would like to add that the minority agrees with that request and supports the request of the gentleman from Missouri.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The resolution was amended accordingly.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio [Mr. BROWN].

Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, House Resolution 514 makes in order the consideration of the bill H. R. 2767, to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Mr. Speaker, under the unanimous-consent agreement which has just been entered into, the rule, which is an open rule, provides for 2 hours of general debate.

The section which the bill proposes to amend is as follows:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The amendment provides that "This section does not authorize the withholding of information from the public or limiting the availability of records to the public."

Before the Rules Committee there was no controversy over the rule. With the change in time just agreed to, I gather there is no controversy about the adoption of the rule now, and I therefore reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. BROWN] is recognized.

(Mr. BROWN of Ohio asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may require.

As the gentleman from Missouri [Mr. BOLLING] has so ably stated, this resolution would make in order H. R. 2767, a bill to amend one of the oldest statutes on our Federal books. It is a bill in which the press of the Nation has been greatly interested for many years. The legislation has the support of such organizations as the national journalistic fraternity, Sigma Delta Chi, and practically every newspaper and magazine publisher and reporter in the United States. It is called the freedom-of-information bill, or amendment.

The bill was reported unanimously by the House Committee on Government Operations, although there were filed with the report by 2 individuals additional views; 1 by the gentleman from Michigan [Mr. HOFFMAN], who will speak on the bill, and the other by the gentleman from Michigan [Mr. MEADER], who will also speak on the measure.

What this bill does is to amend Revised Statute 161, which was adopted in the first session of the First Congress of the United States back in 1789 as a housekeeping provision. I want to read the original law:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

That is the original statute which has been on the books since the creation of this Government. It appears this section has been used too often by too many Government departments, agencies, and officials as an excuse for withholding information from the general public. So, an amendment to that section has been proposed. It is a very simple amendment, a 1-line amendment, which will add this 1 sentence:

This section does no authorize the withholding of information from the public or limiting the availability of records to the public.

That simply means that the public and the press may have access to the ordinary records of the average department and agency of the Federal Government; the right to know, in other words, the right to learn what is going on. I must point out that this amendment does in any way affect some 78 separate statutes, which do provide for the secrecy of many Government records, such as income tax returns, and other similar records.

I do not believe the amendment interferes in any way with the long-established custom which has lasted, for many many years, since Washington's time perhaps, whereby the President can, in the public interest, or as a matter of national security, refuse to divulge certain information, or to permit those in the executive branch of the Government to make available to the public information which in his judgment he believes would be detrimental to the welfare of this country.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield.

Mr. HYDE. In view of what the gentleman has just said with respect to the laws which it does not repeal, and I also gather from the reading of the report and the hearings that it is not the intention to reveal such things as income tax returns, FBI files, or things like that and other matters of security, would it not be better to spell that out by simply adding to what you have here in the amendment the language "where not inconsistent with law", so it cannot be used as an excuse by some officials for giving out information which they should not give out?

Mr. BROWN of Ohio. Let me continue and explain that, if I may, to the gentleman.

It is the opinion of our committee—certainly it is my opinion and my interpretation of this amendment, that it would still be a violation of law for any agency of Government or any Government official to make public any of the records for which secrecy is provided by any of some 78 separate statutes.

It would also, in my opinion, in no way affect the right of the President, which he at least exerts, and which the Attorney General claims he has, and over which there has been a great dispute with Congress at times, as to his right to withhold information from the public or from legislative bodies. It is my understanding the gentlemen from Michigan, both Mr. MEADER and Mr. HOFFMAN, will present amendments to clarify this amendment so as to make definite just exactly what the statute will do, as the gentleman from Maryland has suggested.

As far as I am concerned, and I think as far as the members of the committee are concerned, if any clarifying amendment can be prepared that will further protect the proper interests of the United States in security cases and other matters, where it is the desire of the Congress, or under the statutory laws that grant and permit secrecy, such amendments will be acceptable. I know that members of the press, representatives of the various press organizations of the country, have testified they in no way want to use this new amendment to the law to obtain any information that would in any way be injurious to the United States. So I say in respect to both these gentlemen, who have given great study to this problem, that I hope they will have amendments worthy of the consideration of this

House. Does that answer the gentleman's question?

Mr. HYDE. I thank the gentleman. I gather from what the gentleman says there will be no objection to such an amendment clarifying the point I have made.

Mr. BROWN of Ohio. It wants to be a clarifying amendment. I would not support any amendment I thought would protect the continued practice which now exists of departments covering up and withholding information which might be critical of the department, but in no way injurious to the security of this country.

Mr. HYDE. I agree with the gentleman. I just wanted to make sure how the gentleman felt.

Mr. BROWN of Ohio. I believe, as a newspaper publisher, as well as a Member of Congress, that the people of the United States have the right to know; and as long as we have a freedom of the press provision in the Constitution, and if we are to continue to have a free press, we must guarantee to the press the right to obtain information on public matters. I point out again that there is nothing in this bill which would prove in any way injurious to, or that would endanger, the security of the country, or its best interests; and certainly, the press of the Nation does not ask such a privilege. The only thing the press wants is the right to know, and for the American people to know, what is going on in these departments and agencies, and to do away with some of these secrecy orders and regulations which have nothing to do with the national defense or national security.

I am sure attention will be given to any amendments which may be offered by the two gentlemen from Michigan, both of whom are distinguished members of the committee which considered this legislation, and who have spent a great deal of time and study on it.

Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. MEADER].

(Mr. MEADER asked and was given permisson to revise and extend his remarks and include extraneous matter and also to revise and extend the remarks he will make in general debate on the bill H. R. 2767 and to include extraneous matter in those remarks.)

Mr. MEADER. Mr. Speaker, I believe the gentleman from Ohio has pretty well covered the attitude that the Government Operations Committee took with respect to this legislation. So far as I know there is no opposition to the general purpose of the legislation which is simply to take away from officials in the executive branch of the Government one of the crutches they have used in the past for denying information to the general public. The only debate that was had in committee and the only matter in controversy between myself and the sponsors of the measure is the question of the wording of the legislation.

As the gentleman from Ohio pointed out in his colloquy with the gentleman from Maryland, no one in our committee has any intention, so far as I am aware, of affecting the 78 statutes, or whatever the number may be, under which the departments and agencies in the executive branch of the Government are authorized to withhold information. The only objective of the Government Operations Committee and the sponsors of the bill, as has been explained in debate, and as contained in the report of the committee, is to remove this particular authority that the officials have claimed gives them the right to withhold information from the public. In other words, H. R. 2767 is to be confined to section 161 of the revised statutes, and is not intended to affect any other law or any other right that may exist in the executive department with respect to secrecy or the withholding of information from the public. That was not clear until the matter was discussed in the committee.

I offered an amendment in committee which I thought would strengthen the bill by making the language clearer and would prevent any misinterpretation by a court if the matter gets into a litigated status subsequently. I do not particularly appreciate having people charge me with being opposed to the legislation when my objective is to prefect it. I think we have an obligation here as legislators to see that our language and the expression of our intent are just as clear in the statute as we can make it. I do not think there is any language that is sacred and beyond being touched. I do not care how widely the matter has been publicized throughout the country, we should make our intention as plain as we can. If there is ambiguity or if there is a possibility that a court may misconstrue what we state, it is our obligation as legislators to make that language as clear as we possibly can. That is my one and only purpose in offering the amendment.

Mr. Speaker, I doubt that I will have much support for my amendment, even though I think it is right, because, unfortunately, there has grown up a tendency when a bill is introduced to get public support behind it or the support of groups and to put pressure upon the Members of Congress to "pass this measure without amendment," not without crippling amendments but without even a perfecting amendment. I do not doubt that many Members of this House have received communications from their editors back home urging them to oppose any amendments. They will follow those instructions, undoubtedly, but I do think they ought to pay attention to the debate and do their job here, which is to make legislative intent as plain as we can.

Mr. Speaker, I do not intend to discuss the possible misinterpretation of this very simple one-sentence bill at this time, but I shall do so in general debate. I hope there will be enough Members on the floor so that we really can give some consideration to this measure and make this bill the best bill we can make it. I want to make clear again that I do not know of anyone on the committee who is opposed to the purpose of this legislation, and anyone who offers an amendment should not be tarred with some sinister purpose of defeating the measure.

Mr. HOFFMAN. Mr. Speaker, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Michigan.

Mr. HOFFMAN. Did I understand the gentleman to say he did not know of anyone on the committee who was opposed to the purpose of the bill?

Mr. MEADER. That was my statement.

Maybe I am mistaken. Maybe the gentleman is opposed to it.

Mr. HOFFMAN. I am not opposed to the announced purpose, which is to end the abuse which has been customary in the departments, but I sure am opposed to the adoption of this type of legislation which would destroy the prerogative, the authority, granted to all of the executive departments by the Constitution itself.

Mr. MEADER. I did not mean to undertake to state the position of anyone else with respect to this bill. I know that the gentleman from Michigan [Mr. HOFFMAN] is capable of stating his own position. I may have misinterpreted what I understood to be his position in the committee, in support of the objective as I have described it, namely, to take away from the officials of the executive branch of the Government section 161 as a basis for withholding information. If the gentleman is opposed to that purpose, I did not understand it so in the committee, but I will let him make his own statement on that. So far as I know, no one else opposes the objective of the legislation.

Mr. HOFFMAN. If the objective is to cure an evil which now exists, I am with you, but if it is what I think it is, if the result is what I think it will be and as a political attack on the administration, I sure am against it. This bill is an attempt by the Congress to invade and take over a function, an activity, of the executive department.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time.

Mr. BOLLING. Mr. Speaker, I move the previous question.

The previous question was ordered.

The resolution was agreed to.

Mr. MOSS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H. R. 2767, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

Mr. MOSS. Mr. Chairman, I yield myself such time as I may require.

Mr. HOFFMAN. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 41]

Allen, Ill.	Green, Oreg.	Mumma
Auchincloss	Gubser	Norblad
Barden	Gwinn	Powell
Barrett	Hays, Ark.	Rabaut
Blitch	Hays, Ohio	Radwan
Brown, Mo.	Holifield	Riley
Buckley	Holt	Roberts
Burdick	Jenkins	Scott, Pa.
Byrd	Kean	Sheppard
Celler	Kee	Shuford
Cretella	Keogh	Sieminski
Dies	Lafore	Utt
Diggs	LeCompte	Widnall
Eberharter	Lennon	Williams, N. Y.
Engle	McMillan	Willis
Gordon	Macdonald	Wilson, Calif.
Grant	Madden	Withrow
Gray	Montoya	

Accordingly the Committee rose; and the Speaker pro tempore having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H. R. 2767, and finding itself without a quorum, he had directed the roll to be called, when 373 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. Moss].

Mr. MOSS. Mr. Chairman, I yield myself such time as I may need.

Mr. Chairman, this is really a very simple amendment to a very old statute. Section 161 of the Revised Statutes of the United States, 5 United States Code 22, in the judgment of the committee, was a simple grant of housekeeping authority. I think it might be interesting to read the language:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The bill before us proposes merely to add this language:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

The reason we are offering this amendment is that the special Government Information Subcommittee, after almost 3 years of study, had determined quite clearly on the record that numerous departments and agencies of the Government have tortured this language into a broad authority to withhold information from the public and even from the Congress itself. We did not lightly draft this language. While it appears very simple, much thought has gone into it. The language has been changed at least three times. It has been circulated to a very distinguished list of attorneys, educators, editors, and within the Government itself for comment.

I think it might be well here to first deal with the things that this legislation does not do.

It is confined to amending the language of this section. It does not go to any other statutory authority which confers upon the departments and agencies of Government the right to withhold information. It does not go to any Executive privilege, if such exists. As I understand it, the claim of privilege is supposed to come from some undefined inherent power. If it exists, then it is not subject to modification by statute. It does not go to security-sensitive information. Whenever a withholding is made because the release of information might adversely affect the interests of the United States, the Departments of Government rely on a different authority. This amendment affects only nonsensitive nonsecurity information. Nor does it in any way modify the authority of the Government to direct withholding because the information would be injurious to the United States.

It does not affect the FBI files or the access to those files. Again there is very adequate statutory authority for the safeguarding of that type of information. It does not affect the confidential status of information given to the Government and carefully detailed in title 18, United States Code, section 1905, such as trade secrets, processes, operations, style of work, or apparatus or the identity of confidential statistical data, amount or source of income, profit, loss, or expenditures. It does not affect the confidential treatment of income-tax returns. It does not affect more than 75 additional specific statutory grants of authority for the control of information.

These laws range from national security to peanuts. They included:

National security and defense matters.

Diplomatic codes.

Inventions.

Atomic energy information.

Intelligence.

Cotton data.

Tobacco data.

Information concerning marketing agreements.

Peanut data.

Sugar data.

Alien registration records.

Census information.

Information accumulated by Federal Trade Commission.

Information obtained from accounts and records of natural gas companies.

Information obtained from accounts and records of persons regulated by Federal Power Commission, Federal Trade Commission, Federal Communications Commission, Interstate Commerce Commission.

Names of borrowers from banks.

Tax returns.

Narcotic tax returns.

Information obtained by Railroad Retirement Board.

Record of seamen's discharge books.

Contracts of motor and water carriers.

Information from the accounts of motor, water and air carriers.

Information obtained from manufacturers and distributors of explosives.

Selective service records.

Information obtained from audit of defense contracts.

Information obtained under the Housing and Rent Act, the Export Control Act, Defense Production Act, Civil Aeronautics Act.

Information concerning Civil Service examinations.

Crop reports.

Order and findings as to the removal of national bank directors.

Security Exchange investment advisors investigations.

Foreign Service employees correspondence and records.

Private shipbuilders experiment results.

Veterans' Bureau files.

Postal savings deposits.

Public Health Service records of narcotic patients.

It merely defines the intent of the Congress which, in 1789, first voted this housekeeping authority. This amendment restores its original intent. It says to the Departments of Government "if you desire to withhold information from anyone, including the Congress, then seek specific authority."

It is a very timid first step in bringing order out of a most chaotic field. For too long a time, in my judgment, the Congress has been willing to permit the Executive to determine what people can know, and, in fact, what the Congress can or should know.

We hope, as a further work of the subcommittee, to deal with some of these specific statutory grants, to reevaluate them, to determine whether they are adequate or if there is a real need for them. I hope no one confuses this very mild approach with those other problems. I hope no one imagines that we are trying to open up military secrets, secrets of state, or to lay on the record all of the information which is acquired by the Government.

I want to emphasize again that that is not the intent; that cannot be the effect. This deals only with the authority granted in this section of the code. In my judgment and in the judgment of a great many others who have devoted careful study to this problem, this is the minimum expression which the Congress should make at this time. I believe the language to be clear. I have studied carefully the amendments proposed in committee. It is my judgment that they are not necessary or desirable, and I hope that the committee, when they are offered, will believe, as I do, that the language so carefully put together best expresses the intent and best meets the needs of the moment.

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, I yield myself 15 minutes.

Mr. Chairman, if this bill would accomplish what the gentleman from California [Mr. Moss], the chairman of the three-man subcommittee, says it will and nothing more, I would be en-

thusiastically supporting it. However, having had some experience with legislation and with statesmen—not politicians—I must take the bill as it is written, consider the sources from which it came.

This bill originated with the newspaper people, the people who have news to sell, the people who assume and to a very great degree do speak for the people, and no criticism should or could be made of their activities here. We all realize that much of the freedom of this country exists because we have had a free press. We all realize that without it and without an informed press, we could not make progress, nor could we be secure as a Nation.

The stated purpose of the bill, it has been said, is to cure an abuse. But, how and where did the legislation originate? How have the hearings been carried on? In the first place, on the committee staff, we have three reporters; fine, able, aggressive gentlemen, no question about it. But they have directed the staff activities from the beginning down to today. That is their privilege. But, you should remember their background and what they want. They are first and last lobbyists for the press. They are young, ambitious reporters, with the fixed conviction that they know best how this Government should be operated. They propose to look at and into 78 other statutes and how they are administered. Then tell the Congress—after they have told the press—how the business of the departments should be conducted.

AVAILABILITY OF INFORMATION FROM FEDERAL DEPARTMENTS AND AGENCIES

June 9, 1955, WILLIAM L. DAWSON, chairman of the House Committee on Government Operations, wrote a letter to the Honorable JOHN E. MOSS, a member of that committee, which reads as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D. C., June 9, 1955.

Hon. JOHN E. MOSS,
House Office Building,
Washington, D. C.

DEAR COLLEAGUE: I am asking you to act as chairman of the Government Information Subcommittee of the House Government Operations Committee. Other members to serve on this special subcommittee are Congressman DANTE FASCELL and Congressman CLARE E. HOFFMAN.

Charges have been made that Government agencies have denied or withheld pertinent and timely information from those who are entitled to receive it. These charges include the denial of such information to the newspapers, to radio, and television broadcasters, magazines, and other communication media, to trained and qualified research experts and to the Congress.

In many cases there is no apparent excuse for agencies of the executive branch of Government either to withhold such information or to refuse to communicate it when requested.

It has also been charged that pressures of various sorts have been applied by Government officials to restrict the flow of information and the exchange of opinion outside the Government.

An informed public makes the difference between mob rule and democratic government. If the pertinent and necessary information on governmental activities is denied the public, the result is a weakening of the democratic process and the ultimate atrophy of our form of government.

Accordingly, I am asking your subcommittee to make such an investigation as will verify or refute these charges. In making such investigation you are requested to study the operation of the agencies and officials in the executive branch of the Government at all levels with a view to determining the efficiency and economy of such operation in the field of information both intragovernmental and extra governmental. With this guiding purpose your subcommittee will ascertain the trend in the availability of Government information and will scrutinize the information practices of executive agencies and officials in the light of their propriety, fitness, and legality.

I am sure that the report of your subcommittee will fully and frankly disclose any evidences of unjustifiable suppression of information or distortion or slanting of facts.

You will seek practicable solutions for such shortcomings, and remedies for such derelictions, as you may find and report your findings to the full committee with recommendations for action.

Sincerely yours,
WILLIAM L. DAWSON,
Chairman.

This was followed by a letter of June 13, 1955, which reads as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D. C., June 13, 1955.

Hon. JOHN E. MOSS,
Chairman, Special Subcommittee on Government Information, 414 House Office Building, Washington, D. C.

DEAR COLLEAGUE: It has been brought to my attention that my letter of June 9, 1955, authorizing and establishing your Subcommittee on Government Information, might be interpreted to confine your inquiries to agencies in the executive branch of the Government.

Such is not, and never has been, my intention. Your authorization is premised on the duty of the Committee on Government Operations to study "the operation of Government activities at all levels with a view to determining its efficiency and economy."

This duty to study "at all levels" obviously includes the so-called independent agencies. The mention in the letter of June 9 of "executive agencies" was intended to differentiate and exclude the Federal judiciary and the Congress from your study. It was never intended to exclude independent agencies from the scope of your inquiry. On the contrary, your scrutiny of the information practices of such agencies in the light of their propriety, fitness, and legality may well be one of the most valuable contributions of your subcommittee.

Sincerely yours,
WILLIAM L. DAWSON,
Chairman.

On November 7, 1955, the chairman of the special subcommittee called for an informal panel discussion which would give the subcommittee members and the public an opportunity to learn the views of the specialists in the field of information and particularly their views on the free flow of information from the Federal executive agencies.

Subsequently, hearings, which concluded in February 1958, were held.

Some 199 able, distinguished, expert witnesses were called. More than 3,564 pages of testimony and exhibits were printed.

Prior to the conclusion of the hearings and as the result of the panel discussion and the subsequent hearings, on January 14, 1957, Chairman Moss had introduced H. R. 2767 and that bill, having been referred to the Committee on Government Operations, was, by its chairman, referred to the special subcommittee of which Mr. Moss was chairman, and which held hearings on the bill.

The subcommittee reported the bill to the full committee which, in turn, submitted the bill to the House on the 6th day of March 1958—House Report No. 1461. My additional views, in a garbled form, due to errors in the Printing Office, were carried in that report on pages 14 to 33, inclusive.

H. R. 2767 is a proposed amendment to section 161 of the Revised Statutes of 1878 which reads as follows:

DEPARTMENTAL REGULATIONS

SEC. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.[1]

The amendment would add to the above quoted section the words:

This section does not authorize withholding information from the public or limiting the availability of records to the public.

The subcommittee and the full committee adopted the amendment and favorably reported out the bill.

In the subcommittee and the full committee, another amendment was offered by me, which would have added to the bill as reported out the words:

Nor shall this section be construed as requiring the giving of information or the making of records available.

This amendment was rejected.

Witnesses appearing before the subcommittee were, almost without exception, individuals distinguished as either publishers, editors, reporters, columnists, or lawyers.

So far as can be recalled, no one primarily interested as is the average individual appeared in behalf of the bill or contended that it is necessary or will advance the public's interest. Nor from the time of its introduction until the present has any individual other than those belonging to one or the other above named groups requested my support of the amendment.

Using a catchy slogan, "the people's right to know," the hearings became a remarkably effective outlet for publicity. The thought carried in the slogan is based upon the argument that, this being the people's Government, the people have the right to know what those who govern are not only saying and doing, but thinking. That, therefore, each of the 170 million plus individuals who

[1] Derivation of sec. 161: July 27, 1789, c. 4, v. 1, p. 28; September 15, 1789, c. 14, v. 1, p. 68; August 7, 1849, c. 7, v. 1, p. 49; September 2, 1789, c. 12, v. 1, p. 65; June 8, 1872, c. 335, v. 17, p. 283; April 30, 1798, c. 35, v. 1, p. 553; June 22, 1870, c. 150, s. 8, v. 16, p. 163; March 3, 1849, c. 108, v. 9, p. 395; August 15, 1876, c. 287, s. 3, v. 18, p. 169.

are "the people" has the right to ask of, and have answered by, the executive departments any question concerning executive action in which he may have an interest or as to which he may be curious. From a practical standpoint, that suggestion is absurd.

Nor would enactment of this bill bring about its suggested purpose—which is to give life to the people's right to know—for the reason that heads of the departments, in the exercise of their discretion, will fall back upon constitutional provisions which give them authority. More of that hereafter.

The adoption of the amendment will tend to increased controversy between the staff of congressional committees, congressional committees, Members of Congress, publicists, reporters, and the idly curious, any of whom may, when requesting information which is denied by the departments, wave in the face of the reluctant official a copy of any act written in the words of H. R. 2767.

ABUSE OF SECTION 161

Beyond question, the departments have misused, and sometimes abused, the authority given under section 161 and by the Constitution. This they have done because too many individuals in the departments have been authorized to classify and to withhold records and information coming into their possession.

It is far easier for any subordinate executive official or employee to rubberstamp a record or a communication as "secret," "confidential," "restricted," or in some other manner than it is to make a laborious, firsthand examination to accurately ascertain the necessity or the desirability of so acting.

There is the further incentive to restrict rather than to liberalize an action by the knowledge that if a record or a communication is not stamped with some degree of restriction, later criticism may bring down the wrath of a department head upon the offending official or employee. In addition, there is the all too prevalent inclination of an official to cover up, to conceal any wrong action for which he or others in the department may have been responsible.

THE REMEDY

The remedy will not, for several reasons, be found in the enactment of this bill. Beyond question, the introduction of the bill, the hearings, and the publicity given them, have resulted in the making by department heads of sincere efforts to lessen the abuse of the authority which is theirs, a part of which it has been claimed exists because of section 161.

That section has been erroneously cited by several of the departments as their authority for withholding of information from the Congress, its committees and the public.

The departments' basic authority rests upon article II, section 1 of the Constitution. But section 161 was written as it was deliberately—to give the department heads authority to control the records and information entrusted to their care as is pointed out herein.

Now it is quite true that, this being the people's Government, the people have the right to know what the Government, as represented by the executive department, is doing.

But like many another right, for example, the right to a free press, the right to liberty, the right to own and enjoy property, the right to know is not an absolute right. It, like all other so-called rights, is circumscribed and limited by the rights of others and of the public as a whole.

THE PEOPLE SURRENDERED A PART OF THEIR RIGHT TO KNOW

Moreover, the people themselves, when determining our form of government, provided for three separate and distinct departments and in the Constitution granted to each certain, exclusive authority, surrendered to each department a part of the authority belonging to the people.

The legislative department—not the Supreme Court—was given the authority to write legislation.

The executive department was not given the authority to either write or interpret the law, but it was given the authority to execute the laws and, in certain cases, to use the Armed Forces of the United States and of the States to carry out its duties.

The judicial department was given the authority, not to write legislation, not to enforce legislation—except its own decrees through its own marshals—but the authority to determine whether legislation written by the Congress or the acts of the executive in enforcing it was within the provisions of the Constitution.

True, the departments were created by the Congress under the legislative authority given it and it probably has authority to abolish an executive department and undoubtedly it may, as it has in 78 instances given the executive departments authority to disclose or to withhold information, provide regulations governing its activities.

But inasmuch as the authority given the executive departments is basically theirs by virtue of a constitutional provision, while exercising its constitutional prerogatives, the Executive and those acting for and in his place and stead, cannot be reached by the legislative branch.

While the above statements may seem to be contradictory, in reality there is no contradiction if fundamental principles are kept in mind.

When a department or agency is created by the legislative branch, the Congress may limit its authority, prescribe and delegate the making of the regulations which shall govern.

But where a department is created by the Constitution, authority expressly given it by the Constitution or authority inherent in the grant, the department's action cannot be controlled or regulated by the Congress. The people foreclosed their right acting through the Congress to limit the constitutional grant of power when they wrote into the Constitution itself section 1 of article II which established the executive branch of the Government.

This division of authority was recognized and ably argued by both the present Speaker and the present majority leader when a bill requiring the departments to furnish certain relevant information was before the Congress on May 12 and 13 of 1948.

Those arguments are set forth not only in the CONGRESSONAL RECORD but in the additional views filed with the report on this bill, on pages 19 to 22, inclusive, and in appendix A, pages 33 to 57, inclusive, of the additional views, which are an extension of the argument made by the present majority leader against the bill then pending and which was on the 13th day of May adopted by the House. It died in the Senate.

The bill then pending was a bill which called upon the executive departments to recognize the right of the Congress to relevant information in the possession of the executive departments which would enable the Congress to write legislation—and an entirely different right than the right of the individual sought in H. R. 2767 to any and all information in the possession of the executive departments.

The right of the Congress to information necessary to adequately legislate is carried in article 1, section 1, which is a grant of legislative power.

The right of the Congress to relevant information in the possession of the executive departments which will enable it—the Congress—to effectively legislate has been long and firmly established.

The United States Supreme Court in the case of *McGrain* v. *Daugherty* (273 U. S. 135, decided in 1927), among other things, said:

> We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified. Both Houses of Congress took this view of it early in their history—the House of Representatives with the approving votes of Mr. Madison and other members whose service in the Convention which framed the Constitution gives special significance to their action—and both Houses have employed the power accordingly up to the present time. The acts of 1798 and 1857, judged by the comprehensive terms, were intended to recognize the existence of this power in both Houses and to enable them to employ it "more effectually" than before. So, when their practice in the matter is appraised according to the circumstances in which it was begun and to those in which it has been continued, it falls nothing short of a practical construction, long continued, of the constitutional provisions respecting their powers and, therefore, should be taken as fixing the meaning of those provisions, if otherwise doubtful.
>
> We are further of opinion that the provisions are not of doubtful meaning, but, as was held by this Court in the cases we have reviewed, are intended to be effectively exercised and, therefore, to carry with them such auxiliary powers as are necessary and appropriate to that end. While the power to exact information in aid of the legislative function was not involved in those cases, the rule of interpretation applied there is applicable here. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess

it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two Houses are intended to include this attribute, to the end that the function may be effectively exercised.

With regard to the Senate resolution involved, the Court further said:

It is quite true that the resolution directing the investigation does not in terms avow that it is intended to be in aid of legislation; but it does show that the subject to be investigated was the administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers—specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers and duties of the Attorney General, and the duties of his assistants are all subject to regulation by congressional legislation and that the Department is maintained and its activities are carried on under such appropriations as in the judgment of Congress are needed from year to year.

The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we thing the subject matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better but in view of the particular subject matter was not indispensable.

Since the decision in McGrain against Daugherty, the authority of congressional committees to obtain information from the executive departments has been consistently upheld.

In *Townsend* v. *U. S.* (App. D. C. 1938; 95 F. (2d) 352, February 7, 1938, certiorari denied (1938) 303 U. S. 664), the court pointed out that in light of McGrain against Daugherty, supra, a legislative purpose would be presumed, and that "power to conduct a hearing for legislative purposes is not to be measured by recommendations for legislation or their absence."

In *U. S.* v. *Bryan* (72 Fed. Supp. 58 (May 21, 1947), p. 61), the court said:

Manifestly, the sole purpose for which the Congress may carry on investigations and secure information is in connection with the exercise of its legislative function and with the appropriation of moneys.

THE RIGHT OF THE INTERESTED INDIVIDUAL

The right of the individual who has a special interest in the records or information in the possession of the executive department has been conclusively established.

The right of the individual to know where his own interests are involved and can be served without injury to the public has been upheld by the United States Supreme Court, where the true rule seems to be expressly stated. Where one who had a cause of action against the United States Government which grew out of an airplane accident sought information from an executive department, Chief Justice Vinson stated the case clearly and, in the opinion of many, correctly. Among other things, he wrote:

Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the Court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case. It may be possible to satisfy the Court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the Court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence * * *.

* * * * *

On the record before the trial court it appeared that this accident occurred to a military plane which had gone aloft to test secret electronic equipment. Certainly there was a reasonable danger that the accident investigation report would contain references to the secret electronic equipment which was the primary concern of the mission (*United States* v. *Reynolds* (345 U. S. 1)).

When the right of the Congress to information was being considered, the present Speaker of the House, then minority leader, said:

Mr. RAYBURN. Mr. Chairman, I have sat here all day and I have listened to a very interesting debate. The more debate I have listened to the more things come to my mind, as just expressed by the very able young gentleman from Missouri [Mr. BAKEWELL]. I have heard gentlemen express themselves on this floor today upon so many fundamental questions that I have agreed with in the years gone by. When I saw my old and very dear friend and my able friend, the gentleman from New York [Mr. WADSWORTH], take the floor today, I felt certain he was going to resist the enactment of legislation of this kind and character.

I do not know what you gentlemen think the powers of Congress are. Are they limitless? Is there no limit under the Constitution to which any Congress, much less a very partisan one, would go? Back in the formative period of this Government there was a great jurist. He is quoted by all of us. Especially was he quoted by the Federalists in the early days of this Republic. In 1803 he gave forth this language in a very familiar case, which we lawyers all have heard something about. Sometimes when discussions like these come up I get just a little sorry that I ever studied law, because I would not have been so bothered about my vote on some of the issues raised. But Mr. Justice John Marshall used this language a long time ago:

"By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to the country in his political character,and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political: They respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive."

Pass this resolution. The President says to his Cabinet officer, "No, you are my agent, you are my alter ego; do not give that information to the Congress."

What are you going to do about it? You might have an unseemly session, an unseemly row upon the floor of the House of Representatives. What are you going to do about it? Are you going to impeach the President of the United States because he says the giving up of certain information is not in the public interest? Who is better qualified in matters of national defense—lay aside the State Department that the gentleman from New York says is not covered at all in this legislation—who is better qualified in matters of national defense and the safety of the country?

* * * * *

Who is better prepared? Who knows more about our foreign affairs? He knows better than any other man in Government—not you; not me. Who knows better what is necessary to bring an army and navy and an air force together to defend the country than the President of the United States? And in his wise discretion he makes recommendations to Congress.

My friend from New York said that for nearly 30 years he had been around here. I happen to have been around here 35 years, and I have said from his high place many times that the House of Representatives, next to family and friends, is my life and it is my love; and I do and I shall deeply regret seeing the House of Representatives embark upon a sea as uncertain and in my opinion as dangerous as this one.

The present majority leader of the House, the gentleman from Massachusetts [Mr. MCCORMACK], said:

The majority and minority reports of the committee met the basic issue head on. I think the gentleman from Michigan [Mr. HOFFMAN] will admit that, because at the outset of the minority report I stated:

"Aside from the serious constitutional objections to the resolution, it proceeds on a highly questionable assumption that the majority of any congressional committee," and so forth. I also said:

"The resolution and the majority report squarely raise, as the majority report recognizes, an issue as to whether one branch of our tripartite Government, the legislative, may obtain confidential papers from another branch, the executive, in fields in which that other branch has exclusive jurisdiction."

I must recognize that there must be an independence of the other branches which must be preserved the same as the independence of the legislative branch must be preserved, and I say that under our form of government, consisting of the three coordinate branches, the President of the United States is the one to judge, and not the Congress. And, in turn, the judge of the President of the United States is the people.

We could not administer the executive branches of Government, because under the Constitution we canot. Never mind the practical difficulties, we simply cannot. So that the argument that we have the power to appropriate, then it becomes a higher political question of us with the people, just the same as in the case of the President who says that "these papers are papers that in the exercise of my duty as President of the United States and under the Constitution I

should not transmit," then he has to answer to the people.

* * * * *

But, again, what I am trying to convey is this: We are debating one of the most important questons that has ever faced the Congress. This is a constitutional question of the deepest importance. That is all I can say.

Discussing the then pending resolution, the gentleman from Louisiana [Mr. BOGGS] said:

It seems to me that this is one of the most flagrant invasions of the authority of the executive by the legislative that has come before the Congress since I have been here. Has the gentleman discussed the constitutional implications of this legislation?

In making answer, the gentleman from Massachusetts [Mr. MCCORMACK] said:

This is the first time in the constitutional history of our country that this matter has been presented to the Congress in the form of a resolution. It raises this very deep fundamental question that goes to the very roots of our Government in its organizational setup and in its operational operation, and to the very roots of the integrity of the three cordinate branches of Government. These things unfortunately arise every now and then, but to try and meet it by a head-on invasion of other branches necessary to its existence is not the approach. It should be by individual cases. As a matter of fact, if this Congress wanted to approach it and have it acted upon speedily, the way to do it would be to summon the one who refused to testify on the ground that the papers were confidential or that the President had ordered him not to do so—a friendly proceeding could be made of it—and when he was brought before the bar of the House he could then exercise his legal right, and I assume it would be in the nature of a writ of habeas corpus and this whole grave question decided in an orderly way by the courts of the country.

I hope that my friends without regard to party, recognizing the solemnity of their oath on this great constitutional question, will pass upon it in accordance with the views they entertain in their conscience, not on the basis of policy, but treat it as a question of the gravest constitutional nature.

Mr. Chairman, under permission granted to revise and extend, I include the following in my remarks.

The revised and extended remarks apper as appendix A to my additional views on House Report No. 1461 on H. R. 2767.

When the House was about to consider the bill above referred to by the Speaker, Mr. RAYBURN, and the present majority leader, Mr. MCCORMACK, the St. Louis Post-Dispatch made, on May 10, 1948, the following observation:

Even without the penalties for disclosure, Congress should not assert absolute rights to full access to records needed for forming policy, but the executive branch also possesses administrative records in which Congress has no valid interest. The Presidency is an equal branch of Government, with constitutional rights and mandates separate from those of Congress. Its right to withhold certain kinds of information from Congress, and the public interest in having such information withheld, has been successfully defended since the time of President Jefferson.

No Congressman would think of demanding conference transcripts, personnel records, or any other private papers from the Supreme Court, the third equal branch of Government. The President cannot demand the records of private congressional committee sessions. The Supreme Court makes no such demand on either Congress or the President. No more should Congress try to destroy the President's right to a reasonable and necessary privacy in his department.

The Founding Fathers expected Congress and Presidents to minimize their rivalries by the exercise of reasonable confidence and give-and-take. It needs that spirit to make the American system of government succeed.

That editorial was followed on May 16 by another, which read:

Congress is entitled to any record it needs to formulate public policy. Other records, however, such as personnel files, are the property of the executive branch. To reveal them to Congress might seriously endanger governmental administration.

For example, sound executive decisions are usually reached through an exchange of views among various officials. Naturally, these views differ, and some of them are rejected before the official decision. But the * * * bill would empower Congress to drag out and harp on the rejections. With such a threat over their heads, officials would fear to commit their views to writing; and the quality of decisions would suffer accordingly.

Even the most ardent proponents of this legislation admit, as did practically every witness appearing before the subcommittee, that there was certain information in the possession of the departments which neither the individual, the publisher's representative, nor the Congress itself was entitled to have made available.

That was information the disclosure of which would endanger the national security, be contrary to public policy, or adversely affect the national welfare.

Yet the proponents of this bill would not, and apparently the committee will not now, accept an amendment excluding the making available of that type of record or information.

Even the subcommittee's expert witness, Mr. Cross, showed some of the exceptions to the right to know when, on page 218 of "The People's Right To Know," he wrote:

The right of inspection is not claimed in behalf of public and press in respect of records pertaining to state secrets, diplomatic communications, confidential military matters the disclosure of which might give aid to actual or potential enemies, or of such other records as may be determined by due process of law to be of such nature that inspection thereof would be contrary to the public interest.

Nor do the more fervent, vigorous, and persistent advocates of the public's right to know contend that the department should be required to disclose information or records affecting the miltary or diplomatic fields or the manifold aspects of atomic energy secrecy. Nevertheless, the bill ignores all exceptions.

CONGRESSIONAL RIGHT TO INFORMATION—INTERESTED INDIVIDUAL'S RIGHT TO KNOW

The right of Congress and its committees to information has been firmly established by the United States Supreme Court in the case of *McGrain* v. *Daugherty*, and other judicial decisions and by practice.

The right of the individual who is especially interested in similar information was likewise established by the Supreme Court in *United States* v. *Reynolds*.

Who, then, is especially interested in the enactment of the present bill? Only those interested in publicizing something which it may be thought is saleable or the casual, curious "man on the street" who apparently has excess leisure time—nothing to do other than to inquire as to a matter in which he has no real interest. The man who has no Senator, no Congressman, to whom he may write, from him the complaint has long been that the Government was piling on him unneeded, unwanted, useless information, wasting his money propagandizing its own activities—deluging him with trash mail.

If that right is to be protected, is to be made available, the proper procedure would be the adoption by the department or the enactment of legislation by the Congress of regulations which would call for a limitation of the authority to classify as secret, or otherwise, records and information in the possession of the department. That could be done either by assigning the duty to a few top individuals or by the creation of an appeal board which could pass upon the question of whether a record or information should be classified as secret or with some degree of secrecy, whether it should be freely given out or some limitation placed upon its availability. Such an amendment was carried in the bill H. R. 2810, which was introduced by me. It will be offered under the 5 minute rule; if rejected, other amendments will be offered as well as a motion to recommit with instructions.

THE PURPOSE AND INTENT OF THE CONGRESS IN ADOPTING SECTION 161

It is not a little surprising that the distinguished experts, publishers, editors, and lawyers should assume, as they apparently do, that the Congress, in adopting section 161, had no particular purpose in mind—that it was merely a housekeeping directive; that there is no previous legislation which would indicate its purpose or the reason for its enactment.

In truth and in fact, the legislative history should indicate to even the casual reader that Congress had a definite purpose, and that that was to vest in the heads of the departments authority to determine what should and should not be disclosed, not only to the Members of Congress, but to the public.

To see that this is true, one need but refer to the action of the Continental Congress on February 22, 1782, when it passed a resolution creating a Department of Foreign Affairs under the direction of a Secretary to the United States of America for the Department of Foreign Affairs—and, in that resolution, provided:

That the books, records, and other papers of the United States, that relate to this Department; be committed to his custody, to which and all other papers of his office, any Member of Congress shall have access; provided that: no copy shall be taken of matters of a secret nature without the special leave of Congress.

Moreover, the same resolution also provided—

That letters [of the Secretary] to the ministers of the United States, or ministers of foreign powers which have a direct reference to treaties or conventions proposed to be entered into, or instructions relative thereto, or other great national subjects, shall be sub-

mitted to the inspection and receive the approbation of Congress before they shall be transmitted.

Note that it was also expressly provided by this section that to all papers in his office "any Member of Congress shall have access"—limited that broad provision only by the added proviso that "no copy shall be taken of matters of a secret nature without the special leave of Congress."

Note further the provision in the same resolution which also provided that—

Letters [of the Secretary] to the ministers of the United States, or ministers of foreign powers which have a direct reference to treaties or conventions proposed to be entered into, or instructions relative thereto, or other great national subjects shall be submitted to the inspection and receive the approbation of Congress before they shall be transmitted.

With the knowledge of the legislation passed by the Continental Congress, especially making records of the office of the department head available to the Congress—with only a few exceptions—the Congress, acting under the Constitution when it adopted section 161, deliberately left out any proviso giving Members of Congress, or anyone else, access to the records of information which it is now proposed be thrown wide open to the public.

The previous legislation by the Continental Congress and the experiences under it were undoubtedly the reasons why section 161 made no exception to the authority given the head of the department to prescribe the regulations, not inconsistent with law, for the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The practicability, the wisdom of giving to the head of the department the custody and the manner in which the books, records, and papers committed to his care should be preserved and used had been demonstrated by previous legislation and experiences under legislation of the Continental Congress.

The legislation was deliberately enacted and for the specific purpose of vesting in department heads discretion as to the use of records and information entrusted to their care.

The proposed bill is futile. If passed by the House and Senate, not vetoed—and to not do so will be a repudiation of Executive authority utilized by every President from and including Washington and Eisenhower—will ultimately, if used to free department heads to tell all, be declared unconstitutional.

The present situation discloses the almost absolute power of the press, which, from the beginning, has lobbied for the passage of this bill, unamended.

It is doubtful if many Members of the House have not had from newspapers in their district telegrams based upon a false assumption of what the purpose of the bill is or does, demanding that they support H. R. 2767.

Alert and astute as they are, sometimes it happens that those who furnish us news cannot see a political purpose in a bill, which from a casual examination, they think threatens the right to a free press, but which, in truth and in fact, is nothing more than political propaganda to influence voters at a coming election.

In reality, the proposed legislation involves the basic, fundamental division and separation of authority, which has been the real reason for the success of our constitutional form of government—a separation of power which, it is alleged, is frequently ignored in recent years as the Supreme Court took upon itself the duty of determining what the Congress should have said, instead of recognizing the constitutional authority granted to the Congress to legislate.

The public and the press has apparently been sold a bill of goods.

Even though the proponents of the bill do not contend that it will end the unnecessary secrecy now prevalent, it has apparently been sold to the press on that basis and is being sold to the public on that basis. Those who vote for this legislation may have to explain its ineffectiveness to some disappointed reporter or constituent who has gone down to an agency in the vain expectation of having the files opened as a result of this bill.

The bill is repeatedly headlined by the press as an anti-secrecy bill. For example:

The Washington Post on February 18, 1958, called it a "bill for news freedom"—exhibit 1.

The Washington Post on February 20, 1958, called it a "secrecy curb" in a headline to an Associated Press dispatch—exhibit 2.

The Washington Post on February 20, 1958, called it a "bill to cut United States secrecy" in a headline to an Associated Press dispatch—exhibit 3.

The Evening Star on March 18, 1958, called it a "bill on secrecy" in a headline to an Associated Press dispatch—exhibit 4.

The Washington Post on March 27, 1958, called it a "bill to curb Government secrecy"—exhibit 5.

The Washington Post in an Associated Press story last Monday—April 14—called it a "freedom-of-information bill"—exhibit 6.

EXHIBIT 1

[From the Washington Post and Times Herald of February 18, 1958]

BILL FOR NEWS FREEDOM IS ADVANCED IN HOUSE

(By Richard L. Lyons)

The House Government Information Subcommittee yesterday unanimously approved a one-sentence bill to prevent use of a 1789 "housekeeping" statute as authority for Government secrecy. . .

The bill is scheduled to go before the parent Government Operations Committee at its Wednesday meeting. It was offered as a modest first step to crack secrecy in the 10 Federal executive departments.

The measure states that the old law empowering department heads to make regulatons for the custody, use, and preservation of their records does not authorize withholding them from the public.

Executive departments repeatedly have relied on the statute as authorizing them to withhold information. The subcommittee, newsmen, and others contended it was not so intended. They said it was a routine measure of the First Congress simply authorizing the new Government to keep a filing system.

Representative CLARE E. HOFFMAN, Republican, of Michigan, joined with Chairman JOHN E. MOSS, Democrat, of California, and Representative DANTE B. FASCELL, Democrat, of Florida, in sending the bill to the full committee, but reserved rights to file additional views of his own in the report on the bill.

HOFFMAN expressed himself at hearings in favor of action to pry information out of the executive branch. But he feared that the Moss bill was a make-it-public directive that might go too far. He filed a separate bill permitting department heads to keep information secret for several reasons, including their finding that disclosure would impair efficiency of government.

Moss said his bill would not force disclosure of anything. It would, he said, simply remove one law that the executive branch has cited to justify secrecy. It has been estimated that 80 other laws permit secrecy in various specific areas, though none give such blanket authority as has been read into the 1789 act.

EXHIBIT 2

[From the Washington Post and Times Herald of February 20, 1958]

ROW FLARES OPENLY OVER SECRECY CURB

A backstage row broke into the open yesterday over legislation designed to curb secrecy in Government.

Representative GEORGE MEADER, Republican, of Michigan, said he will attempt to change the bill at a closed meeting of the House Government Operations Committee, tentatively scheduled for Thursday. He said his wording would make the measure's meaning clearer.

Representative JOHN E. MOSS, Democrat, of California, author of the bill, shot back that MEADER's two-word amendment would "completely destroy" the aim of the bill.

The Moss measure would amend a 169-year-old law giving Federal department heads authority to make regulations for custody, use, and preservation of records to say it "does not authorize withholding information from the public."

MEADER said he wants to amend that to say withholding information is neither authorized nor prohibited.

The Moss bill, opposed by all 10 Federal departments, was unanimously cleared by the three-man Government Information Subcommittee headed by Moss. It appeared set for clear sailing when the parent Operations Committee met in secret session last week.

However, MEADER said committee action was postponed for a week when a question was raised whether the bill actually might be interpreted as requiring the departments to open up the files.

Since then, MEADER said, misinformation has been circulated that all four committee members from Michigan—Representatives CLARE E. HOFFMAN, Republican, VICTOR A. KNOX, Republican, MARTHA W. GRIFFITHS, Democrat, and MEADER—are against the bill.

MEADER said the truth is that he is very much in favor of the objective of the bill and has heard no opposition to its purpose.

He said he believes no committee member wants to lay bare secrets like missile blueprints at Huntsville, Ala., while all wish to prevent the 1789 law from wrongful use as a secrecy shield.

EXHIBIT 3

VOTE DELAYED ON BILL TO CUT UNITED STATES SECRECY

[From the Washington Post of February 20, 1958]

The House Government Operations Committee put off action temporarily yesterday

on a bill aimed at cutting down on excessive Federal secrecy.

The measure had been approved by a subcommittee on Government information. But at a closed session of the parent operations committee called by Chairman William L. Dawson (Democrat, Illinois), a vote was delayed until at least next week.

One of those who attended said Representative CLARE E. HOFFMAN, of Michigan, the senior committee Republican, asked more time to prepare an amendment. HOFFMAN has been pushing for a rival measure.

The bill by Representative JOHN E. Moss (Democrat, California), would state that executive department heads cannot draw on an old law as authority for withholding information from the public. The 1789 statute authorized department heads to make regulations for the custody, use, and preservation of records.

Moss and newspaper industry spokesmen say Federal officials have exercised authority for secrecy not intended by the law's framers. All 10 Federal departments oppose the bill.

EXHIBIT 4

[From the Washington Evening Star of March 18, 1958]

BILL ON SECRECY GETS BACKING

A bill aimed at knocking out one of the legal props under Federal secrecy has been approved unanimously by a House Subcommittee on Information.

Chairman Moss, Democrat of California, said the three-man group agreed at an impromptu meeting yesterday to send the bill to the parent Government Operations Committee for a vote expected tomorrow.

Representative HOFFMAN, of Michigan, the lone subcommittee Republican, said the measure was "much ado about nothing." He said he will file additional views to the official subcommittee report accompanying the bill.

The bill, sponsored by Mr. Moss and others, and backed by the newspaper industry, says that an old Federal housekeeping statute does not authorize withholding information from the public. The old law, enacted in 1789, authorizes department heads to make regulations for the custody, use and preservation of records.

Mr. Moss and newspaper spokesmen say the old statute has been twisted by Federal officials over the years into asserted authority to keep documents secret when that was not the original intent. All 10 Federal departments opposed Mr. Moss' bill amending the law.

Yesterday's legislation was the first to emerge from the subcommittee since it was created in mid-1955.

EXHIBIT 5

[From the Washigton Post and Times Herald of March 27, 1958)

HOUSE GETS BILL TO CURB GOVERNMENT SECRECY

The House Rules Committee yesterday sent to the floor for action, probably next week, a bill stating that a 1789 Government "housekeeping" statute shall not be used as authority for Government secrecy.

The bill is described by backers as a small first attempt to crack a heavy curtain of Government secrecy. It was proposed by the House Government Information Subcommittee headed by Representative JOHN E. Moss (Democrat, California) after a 2-year study.

Moss found that executive departments have relied heavily on the old statute in withholding information from the public. The law authorized department heads to regulate the keeping of their records. Moss contended, and his one-sentence bill so states, that this was intended to authorize the keeping of files, not secrets.

During the Rules Committee hearing, Representative CLARENCE J. BROWN (Republican, Ohio) recalled that the Hoover Commission once was denied access to some of its own reports because they had been stamped secret by the State Department.

BROWN, a member of the Commission, said the ban was lifted only after he protested to the then Attorney General, Herbert Brownell, Jr., who was also a Commission member. The Hoover reports had criticized waste and inefficiency in the foreign aid program, BROWN said.

Attorney General William P. Rogers agreed in Senate testimony 2 weeks ago that the 1789 act did not authorize department heads to withhold information. He added, however, that the President has inherent power to withhold information as the public interest requires.

Rogers called the Moss bill "meaningless," but stated that he would not oppose it if Congress stated it did not intend to impair the "executive privilege" claimed by Rogers for the President.

Later, Rogers flatly opposed any change in the old statute. He said the 1789 act was a "legislative recognition" of executive privilege. The Senate Constitutional Rights Subcommittee said it was "baffled" by his two statements and has asked him back to testify again.

EXHIBIT 6

[From the Washington Post of April 14, 1958]

IMMIGRATION SERVICE REMOVES SECRECY BAR

House investigators reported yesterday that the Immigration Service has removed a secrecy bar on information about the employment of Japanese farm laborers in this country.

This word came from the Government Information Subcommittee whose chairman, Representative JOHN E. Moss, Democrat of California, is pushing for House passage of a freedom-of-information bill this week.

Here is what happened, according to a subcommittee staff finding:

Ernesto Garlaza, an official of the National Agricultural Workers Union, asked the Immigration Service's San Francisco office last July for the names of employers authorized to hire imported Japanese farm workers and how many were employed by each.

A United States-Japanese treaty provides for bringing Japanese agricultural workers to this country for up to 3 years at a time. Most of them are brought to California.

Assistant Immigration Commissioner L. W. Williams wrote to Garlaza: "The information sought by you cannot be furnished in view of the fact that the internal records of this service may not be made available to the general public.

Moss asked Commissioner Joseph M. Swing last month for an explanation. Swing said "there is no regulatory or statutory bar" against giving out such information.

Swing said his service does not have the data sought by Garlaza on an up-to-date basis. He said the Japanese workers are frequently transferred. The Immigration Service has no objection to giving Garlaza the information he seeks, Swing said.

The Japanese labor situation would not be directly affected by Moss' antisecrecy bill, although it was regarded as part of the Congressman's drive against what he calls a climate of excessive secrecy in Washington.

INCONSISTENT POSITIONS

The inconsistency of some of the proponents of this legislation would be amusing, if not so absurd.

Some proponents seem to say, "Do as I say, not as I do."

Insisting that the executive department maintains an open door, and this for the good of the public, they slam shut with a bang in the face of the inquiring public—for whom their hearts bleed so copiously—the congressional door, behind which is hidden their activities and expenditures, even as the citizen approaches the sacred portal.

If the principle of the public's right to know is what concerns the Congress, how about setting an example as well as pronouncing precepts.

Congressional committees meet in executive—secret—sessions and, strangely enough, this bill—H. R. 2767—was voted out of a closed-door meeting.

According to an Associated Press story in the Washington Evening Star, Chairman DAWSON "said secret sessions allow Congressmen to consider matters without pressure that he said would be aimed at them in an open meeting and without a public-session temptation to play to the grandstand."

[From the Washington Evening Star of March 19, 1958]

ANTISECRECY BILL DEBATED

The House Government Operations Committee considers today a bill aimed at cutting down on Government secrecy.

Chairman WILLIAM L. DAWSON, Democrat of Illinois, ordered a closed-door meeting to consider that and other matters.

The one-sentence bill by Representative Moss, Democrat of California, would state that executive department heads cannot draw on a 169-year-old law as authority for withholding information from the public.

The 1789 statute authorized department heads to make regulations for the "custody, use and preservation" of records.

Mr. Moss and newspaper industry spokesmen say Federal officials have twisted the law from a simple housekeeping statute and claimed it as authority for secrecy not intended by the law's framers. All 10 Federal departments oppose the bill.

The subcommittee also has heard news industry testimony that Congress holds too many secret committee meetings.

Mr. DAWSON told a newsman he is convening his committee behind closed doors today because that is the normal procedure when it comes to voting on bills and approving reports.

He said secret sessions allow Congressmen to consider matters without pressure that he said would be aimed at them in an open meeting and without a public session temptation to play to the grandstand.

RAYBURN RULING RE CHUDOFF FILES

Subsection 25 (c) of rule XI of the House, provided—

All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records. Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee (p. 599, subsec. 25 (c)).

As a Member of the House, as a member of the Committee on Government Operations, as the ranking member of the minority of that committee, I sought on August 6, 1957, through the use of a Thermo-Fax machine, to make copies of certain records on file and in the

possession of the Chudoff subcommittee of the Committee on Government Operations, on which I was also the ranking member. I was permitted to look at the records but, by the ruling of the chairman of that subcommittee, I was denied the right to make copies thereof.

On August 14, 1957, daily CONGRESSIONAL RECORD, page 13428, I brought the issue before the House on a question of personal privilege. Among other things, the following occurred—CONGRESSIONAL RECORD, daily copy, page 13430:

The SPEAKER. Has the gentleman ever been denied access to these papers and files?

Mr. HOFFMAN. Yes.

The SPEAKER. When?

Mr. HOFFMAN. The date was August 6, 1957. We were denied time and again our unquestioned right to information. We have been refused access to the records when we were there, and refused our right to know what was going on, what the committee was investigating—the purpose of a hearing until the committee was called to order for a hearing. That is just one part. We have 9 subcommittees, and only 1 chairman has denied us that right. I say it is an outrage.

The SPEAKER. Perhaps it is. The matter the gentleman read from states that all committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records.

I think that is what the gentleman was talking about.

Mr. HOFFMAN. That is just what I was talking about, and I want access. When access is given, with it goes the power to use it to not only look but make notes, take copies, understand what is at hand, what is to be determined. No one can remember accurately all that is in some of these charges without study.

The SPEAKER. The question of copying and the question of photostating is another matter. That is not provided in this section of the rule.

Mr. HOFFMAN. So "access" means I can go and take a look but I cannot use modern means of copying. How do you like that?

How do you like that? Is that orderly, fair procedure?

The SPEAKER. If a question like that came up in the House the Chair would certainly rule that the gentleman could not bring a machine in here and copy things around the desk.

The Chair does not believe the gentleman has stated a question that violates the rules of the House.

Mr. HOFFMAN. No one is asking to take photographs, bring a machine into the House, though we do have a loudspeaker on the Speaker's desk and in the well of the House. That is an up-to-date, practical, and necessary device, so is the Thermo-Fax which many Members use in their offices for exact, quick copies. Well, that is the ruling I expected.

A committee of the House, the Committee on Government Operations, is now asking approval of a bill which would deny to the executive departments the right to withhold from any individual any record or information in its possession, no matter what the necessity for secrecy, no matter how dangerous to the national welfare disclosure to the public might be. Yet, a congressional committee and a Congress would deny to its own Members, where access to records is granted, the right to make copies.

The distinguished Harold L. Cross, author of the People's Right to Know, would agree that "access to" includes the right to copy, to make photographs of, for, on page 34, he writes:

4. Right to copy, etc.: The right to inspect public records, in the absence of statutes to the contrary, which now are rare, carries with it the right to make copies and to take extracts or memoranda. This is the case at common law, in some States at least, and is commonly, though not always, granted in express terms by statutes. "'Inspection,'" said a New York Court, "means more than perusal. It means: 'Critical examination; close or careful survey.' Century Dictionary. 'A strict or prying examination; close or careful scrutiny; investigation.' Webster's Dictionary." These rights, however, cannot be exercised so as to harass the officer having custody or to interfere with public business.

5. Right to photograph, etc. This right has not been tested often. Louisiana grants it constitutionally in the case of parish poll books, etc., and by statute to public records. Florida grants it by statute in cases where any person has a right to inspect, copy, or extract any public records. It seems likely that the right to photograph will be allowed where the right to inspect exists, if precautions are taken to prevent interference with the operations of the record office and to prevent expense or danger to the records not involved in ordinary inspection and copying.

No one will contend that the use of the Thermo-Fax, a comparatively small facility, readily portable, instantaneously making copies without noise or inconvenience to others, should be denied to one who is permitted access to information, which causes no inconvenience to anyone.

HERE IS ANOTHER DENIAL OF THE PUBLIC'S RIGHT TO KNOW

Plans for extending the Capitol's east front are not for publication and do not belong to the public.

[From the Washington Post of February 20, 1958]

EAST FRONT DIMOUT

J. George Stewart, Architect of the Capitol, painted himself into a corner by saying on Monday that plans for extending the Capitol's east front are not for publication and do not belong to the public. Surely Mr. Stewart does not mean that the public must wait until contractors have finished the job before being permitted to judge whether a landmark has been vandalized. Yet, unless the plans are released, things may come to just that. The 32-foot extension was voted in 1955, and plans are understood to be in the final stage; the Senate hearing before which Mr. Stewart testified was billed as a "half-past the eleventh hour" affair by its chairman, Senator PAT MCNAMARA.

In arguing that no question of secrecy was involved, Mr. Stewart was perhaps more candid than he knew. "It is the way things are done on the Hill," he explained simply. That is a painful truth. The plans are now before the Commission for the extension of the Capitol, which is run pretty much as a one-man show by Speaker SAM RAYBURN. Nominally, other members include Vice President NIXON, House Minority Leader MARTIN, Senate Minority Leader KNOWLAND, and the Architect of the Capitol. Mr. Stewart asserts that the Commission has not yet authorized release of the plans. Well, why not? The Commission clearly must have known that many reputable architects have challenged the proposal, and that a hearing was scheduled on Monday. Doesn't the public have a right to know how $10.1 million in tax money may be spent on changing the Capitol of the United States—a building which, we had been told, belonged to the American people?

The Washington Post and Times Herald of April 8, 1958, said:

The Kilday subcommittee of the House Armed Services Committee, to which the President's defense reorganization plan has been referred, has been meeting in secret. * * *

In a Government in which two-thirds of the money and two-thirds of Government personnel are in the Defense Establishment, however, secrecy cannot be thrown over the whole enterprise without imperiling the democratic process. * * *

The people need to know the thinking of their representatives upon these grave problems.

[From the Washington Post of April 8, 1958]

DEFENSE IN THE OPEN

The Kilday subcommittee of the House Armed Services Committee, to which the President's defense reorganization plan has been referred, has been meeting in secret. There is no justification for applying to hearings on the reorganization plan a procedure adopted for the specific task of missile reappraisal at the start of this session.

Prior to the missile hearings, the House Armed Services Committee, under Chairman CARL VINSON, had been one of the most openly conducted committees of the House. Perhaps there was an occasion for some departure from open meetings during the missile probe. But surely any such consideration does not apply to the broad questions of structure which the subcommittee now is to examine.

In the contemplation of military policy there may be areas where secrecy is essential. In a Government in which two-thirds of the money and two-thirds of Government personnel are in the Defense Establishment, however, secrecy cannot be thrown over the whole enterprise without imperiling the democratic process. The forthcoming reexamination of the structure of the Defense Department is one in which American citizens have the most vital concern. They need to be privy to this debate as it proceeds, if public opinion is to have a normal and an appropriate influence upon policies that may determine the very survival of the country.

The people need to know the thinking of their repersentatives upon these grave problems; and the representatives need to know the thinking of the people. We hope that Chairman VINSON and his committee will see to it that these deliberations are conducted in the open.

Last Monday, April 14, the Washington Post, commenting editorially on executive sessions of the Senate Foreign Relations Committee, said:

This substitution of closed-door questioning for a public hearing is growing lamentably more frequent.

[From the Washington Post of April 14, 1958]

HOLLOW HEARING

It is becoming a distressingly familiar phenomenon for committees of Congress to regard public hearings as an empty ritual, signifying nothing. A case in point has been the desultory manner in which the Senate Foreign Relations Committee has handled its public hearings on the $3.9 billion mutual assistance program. Recently Gen. Lauris Norstad, NATO's Supreme Commander in Europe, found his words echoing in an almost empty chamber. Only two Senators

were present during most of General Norstad's testimony; both asked a few perfunctory questions and called it a day. The committee, of course, did subsequently question General Norstad in great detail—but in executive session. This substitution of closed-door questioning for a public hearing is growing lamentably more frequent. The result is to make public hearing a lifeless tableau in which mimeographed statements are mechanically intoned, stifling any sense of debate or inquiry.

A few days ago, the committee showed an equally bland indifference to its obligation to provide a forum for the meaningful expression of opinion. On the 1 day set aside for public witnesses, 35 persons were whisked by; each had 10 minutes of time. Hardly a scattering of questions came from the handful of Senators who troubled to put in an appearance. Yet 28 of the witnesses represented substantial organizations, including the United States Chamber of Commerce, AFL-CIO, General Federation of Women's Clubs, National Council of Churches, League of Women Voters, National Farmers Union, and American Farm Bureau Federation.

Doubtless some of the testimony was a pro forma expression of long-known views. But several witnesses made suggestions which deserve at least the polite attention of the committee and its 90-year-old chairman, Senator GREEN. Wallace Campbell, representing the Cooperative League of America, proposed an international electrification plan using some of the tested techniques of the REA. Victor Reuther, speaking for the United Auto Workers, suggested training a corps of American youth to provide skilled help for underdeveloped countries. How do Senators expect the public to be alert to world affairs when an exalted Senate committee itself shows such a dozing indifference?

[From the Washington Evening Star of September 12, 1956]

CONGRESS BARRED PUBLIC FROM THIRD OF MEETINGS

Congress barred the public from 1,131 of its 3,121 committee meetings in 1956, or more than one-third of them.

And in many cases, committee chairmen did not follow the custom of reporting closed meetings after they had been held.

Congressional Quarterly kept day-to-day records of committee meetings and found that 36 percent of them were closed in 1956. This compares with 36 percent in 1955, 41 percent in 1954, and 35 percent in 1953.

No major committee—one meeting 10 or more times—opened all its meetings to the public. Eleven committees met at least half the time behind closed doors. The 11 and their percentages of closed meetings:

Senate Rules and Administration, 100 percent; House Administration, 70 percent; Joint Atomic Energy, 64 percent; House Ways and Means, 63 percent; Senate Foreign Relations, 63 percent; House Public Works, 57 percent; House Foreign Affairs, 56 percent; Senate Special Committee To Investigate Political Activities, 55 percent; Senate Armed Services, 54 percent; Senate Finance, 52 percent; House Education and Labor, 50 percent.

Spokesmen for several of those committees listed such things as national security, Government efficiency, and preserving the private rights of witnesses as reasons for closing meetings.

Many of the meetings closed to the public in 1956 were on seemingly noncontroversial matters. For example, the House Education and Labor Committee went behind closed doors at times to discuss legislation to establish an arts committee and to authorize a medal for distinguished civilian achievement.

Several committees held 25 percent or less of their meetings in executive session. Those committees and percentages:

Senate Small Business, 5 percent; House Interior, 6 percent; Senate Interstate and Foreign Commerce, 11 percent; House Small Business, 14 percent.

Certainly, the individual who pays the taxes, this being the people's Government, should have a right to know how the taxpayer's money is spent—but, apparently through the directions of congressional leaders, not only the taxpayers but inquiring Members of Congress, cannot even get a peek into the room where counterpart funds are doled out—a look at how much, and for what. Those tax dollars are actually spent by Congressmen themselves, or their employees.

So far as can be seen, the disclosure of any or all of the above information would not have endangered either the public welfare, the security of the Nation, or injured anyone.

[From the Washington Daily News of July 31, 1956]

RANK IGNORED—NOBODY'LL TELL CLARE ABOUT HILL JUNKETS

Representative CLARE E. HOFFMAN, Republican of Michigan, charged today that both the Pentagon and Congress are trying to keep secret the extent of congressional overseas junkets made at taxpayer expense.

Mr. HOFFMAN said the Defense Department has failed to make good on its promise of 9 months ago to give him a complete record of which Congressmen and Senators and their wives made trips during 1955, which was a record globetrotting season.

And now, Mr. HOFFMAN said, even congressional sources won't give him the information.

"Congress itself is refusing information to one of its members," he said.

The Defense Department has given a report to Chairman OMAR BURLESON, Democrat of Texas, of the House Administration Committee, which is supposed to keep tabs on congressional spending.

Mr. BURLESON refused a request for the report several weeks ago on the grounds that it would present an "unfair" picture of congressional travel.

Records on what congressional junkets cost have long been withheld from reporters.

Mr. HOFFMAN said today that he wrote BURLESON on July 11 and again on July 19 for a copy of the report. In each case, he said, Mr. BURLESON's committee staff replied the request would be called to Mr. BURLESON's attention when he returns from Texas.

Mr. HOFFMAN said that as ranking Republican member of the House Government Operations Committee he is entitled to the information.

"We should have economy in the legislative as well as the executive branch," he said.

[From the Washington Post and Times Herald of August 1, 1958]

HOFFMAN SAYS JUNKET DATA HIDDEN

Representative CLARE E. HOFFMAN, Republican of Michigan, accused the Defense Department and Congress yesterday of trying to keep secret the extent of overseas trips made by Members of Congress at taxpayers' expense. HOFFMAN said the Defense Department failed to make good on its promise of 9 months ago to give him a record of the Congressmen and Senators who made trips during 1955. Last year was a record globetrotting season.

Now, HOFFMAN told a reporter, even congressional sources won't give him the information.

The Defense Department has submitted a report to Chairman OMAR BURLESON (Democrat, of Texas) of the House Administration Committee, which is supposed to keep tabs on congressional spending. BURLESON refused a United Press request for the report several weeks ago on the grounds it would present an "unfair" picture of congressional travel.

Records on what congressional junkets cost have long been withheld from newsmen.

HOFFMAN said that as ranking Republican member of the House Government Operations Committee he is entitled to the information.

HOFFMAN, a longtime economy advocate, said "we should have economy in the legislative as well as the executive branch."

HOFFMAN would become chairman of the investigating committee if the Republicans win control of the House next year. In that event, he said he would see to it that Congress puts "its own house in order."

As was said in opening, the adoption of H. R. 2767 will not prevent the abuse which it is designed to reach.

It will merely supply ammunition to a reporter, or a curious individual, with which to annoy department officials or employees of the departments—which will then fall back upon the authority granted by the Constitution and refuse to make available records or information which, in the opinion of the department head, acting upon the advice of the Attorney General and at the suggestion of the President, determine it is but contrary to public policy or injurious to the public welfare or our national security.

The bill is a political attack upon the administration and questions the judgment and patriotism of future Presidents.

The only then available remedy, as was suggested by the present Speaker of the House when debating a similar issue on May 13, 1948, would be the impeachment of the President—a futile gesture.

The effect of the adoption of H. R. 2767 is to create discord between the executive departments and the Congress and Members thereof.

It is an effort to strike down the statutory and constitutional authority of the departments to efficiently perform their duties.

As has been pointed out, that purpose was denied by the chairman of the subcommittee, the gentleman from Florida [Mr. FASCELL] and by Mr. CROSS.

But if that is not the purpose, why add on to section 161, which authorizes the head of each department to prescribe regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, the distribution and performance of his business, and the custody, use, and preservation of the papers and property pertaining to it, the statement that the authority there granted does not authorize the withholding of information from the public or the limiting of the availability of records to the public?

Throughout the hearings, no testimony was given as to the meaning of the word, "use," carried in this section.

If the head of the department is told, as he is by this amendment, that he cannot use the section to authorize the withholding of information, does it not logically follow that the information must be given out on demand?

If one is told that he cannot close the door to his office, does it not follow that whoever will may enter?

If the section has been a bar to all those who sought to travel the road to public records, does it not follow that seeing it shall not be so used, means that the road is wide open?

If the purpose of the amendment is not to open the door, what objections then can there be to the further amendment that the section shall not be construed as requiring the giving of information or the making of records available?

Those familiar with the facts of life can readily visualize the seeker after information, the would-be viewer of records, presenting his request or demand with a copy of section 161 as amended, as his ticket of admission.

Unacceptable as it may be to some under our form of government, even though it be the people's government, there is no unrestricted right in anyone to know all.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. HOFFMAN] has again expired.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. Moss].

Mr. MOSS. Mr. Chairman, I yield 20 minutes to the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Chairman, I believe I shall be able in the time allotted to me to clear up several apparent misconceptions. I think it would be important to start out first in understanding how information of the United States Government is today presently classified and withheld from the public.

First, no one denies the right of Congress to pass a law stating specifically that particular information should be withheld or classified in a particular respect.

This subcommittee which has studied this problem of Government information, has compiled in a committee print issued March 1958 this session, a compilation of statutes authorizing the withholding, restricting, or limiting the availability of Government information and records. In this committee print you will find that Congress has acted on many statutes involving the classification or the withholding of information. For example, disclosure of information affecting national security. Under that you have:

Information detrimental to national security may be omitted from the annual report of the Secretary of Defense (U. S. Code 10, section 5182).

Atomic energy information is controlled; United States Code, title 42, with respective sections thereunder; and there is a list of the congresisonal acts controlling or prohibiting the disclosure of information, disclosure of confidential information acquired by private persons under compulsion of law; and you will find therein trade secrets or names of customers obtained under the Commodity Exchange Act; United States Code, title 7, section 12, cotton data furnished the Secretary of Agriculture; tobacco data; peanut data.

Then under United States Code, title 50, information obtained under Defense Production Act of 1950, premature disclosure of which would give an unfair advantage to recipients; United States Code, title 18, crop reports; miscellaneous provisions imposing restrictions on release of information, and many others.

Congress has acted where it was felt necessary in those categories where it was essential to withhold information from the public for security reasons. In addition we find today that information is classified and withheld in another manner by the Executive of the United States. You will find that Executive Order 10501, which was issued as of November 5, 1953, carries as its title "Safeguarding Official Information in the Interest of the Defense of the United States," setting up in classification categories as top secret classified, certain methods and procedures whereby material may be within the purview of the executive regulations set forth in executive orders classified properly to safe guard the national defense interests of the United States.

In addition to this the Executive from time to time has claimed the prerogative of withholding information from the Congress and the public without issuing an Executive order merely by stating or just by saying that he will not do so; and he can express himself verbally or by letter, or by any method he sees fit to employ.

These are the methods by which information is presently withheld and controlled by the Congress of the United States and by the President of the United States. By no means do we get into the age-old discussion as to the prerogative of the President to withhold from the Congress. This is another matter, another fight at another time; and I might add, parenthetically, one well worth while studying, and I think it is a matter that has lain dormant far too long. I would wish, frankly, that the legislation which is before us today would get into this problem and do something realistic about it now, but I must confess that this legislation is a long way from doing that.

Just where is this statute we are talking about today? United States Code, title 5, chapter 1.

What is title 5 of the United States Code? The title is "Executive Departments and Government Officers and Employees."

What is chapter 1 under that title? Chapter 1 contains provisions applicable to departments and officers generally. I think that is quite clear as to what the chapter means.

Let us look at the sections within that chapter. I will not read all of them but just to give you an understanding of what this chapter deals with I would like to read the titles of some of the sections.

The application of the provisions of this chapter—

And this one I must read—

shall apply to the following executive departments.

And it lists the Department of State, the Department of Defense, the Treasury Department, and the executive departments of Government. It does not say "and," "if," or "but" or anything else.

The provisions of this chapter are specifically applicable to the Executive Departments of Government and nothing else by the very terms of the statute.

Mr. MEADER. Mr. Chairman, will the gentleman yield? I would like to clarify that point.

Mr. FASCELL. Let me finish my statement and then we will clarify it.

Mr. HOFFMAN. I will yield the gentleman another 2 minutes if he wants to yield to the gentleman.

Mr. FASCELL. I yield to the gentleman from Michigan.

Mr. MEADER. I wanted to make clear the gentleman's interpretation of the statute he is referring to means it would not apply to independent agencies, such as the Federal Communications Commission, the Civil Aeronautics Board, the Atomic Energy Commission, but only to the statutory departments that are represented in the President's Cabinet.

Mr. FASCELL. The gentleman is correct and I thank him for his clarifying question.

That is absolutely the intent of the statute limiting its application to the executive departments listed in the law itself.

Let us go on to some of the other titles in chapter 1 of title 5 of the United States Code. It deals with the salaries of the heads of departments, it deals with vacancies, it deals with temporary appointments, it deals with commissions, it deals with removal for disability, the oath of office, the administration of the oath, the departmental regulations, suspension of civilian officers, the delegation of power and authority, the supervision of clerks, the definition of duties, the duty of a chief upon receipt of a report, Saturday half holidays. It goes on and on, detailing what? Detailing provisions applicable to officers and departments generally of the executive departments named in the statute.

Now, as we go through the titles of this statute we come to section 22. Let us read section 22. The title is "Departmental Regulations."

The head of each department—

Each of the executive departments of Government—

is authorized to prescribe regulations—

A customary provision of law—

not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it—

Meaning all departments.

That is section 22 which is the subject matter of amendment by the pending legislation dealing with the conduct of the operation of the officers and employees of the departments, the heads of the executive branch of Government, and giving them the right to prescribe regulations to do these things.

Now, why do we seek to amend this particular section of the law? Why is it necessary to come before this body and seek an amendment as proposed by

the pending legislation? The answer is very simple. The Special Public Information Subcommittee of the House Committee on Government Operations in conducting a study on the whole problem of Government information today submitted a questionnaire to all agencies of the Government, not only the executive agency departments listed in this title but to all other agencies, including the so-called independent agencies, the regulatory agencies and other agencies of Government.

One of the questions in this detailed questionnaire—by the way, it is a committee print of this subcommittee in which all of the questions are listed in detail and all of the responses are listed in detail—was "By what authority do you claim or do you exercise the right to withhold information?" I paraphrase the question, but generally that was it. And, we find section 22—title 5, United States Code, section 22—was cited as legal authority by the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of the Interior, Justice, Labor, Post Office, State, Civil Service Commission, Housing, and Home Finance Agency, Interstate Commerce Commission, Smithsonian Institution, and others.

Mr. MEADER. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Michigan.

Mr. MEADER. I notice the gentleman has read in the list several commissions or agencies which are not departments, and yet he has made the point that title 5, United States Code, section 22 applies only to departments. By what right does the Civil Service Commission claim it has the authority to issue regulations under title 5, United States Code, section 22 if it was not even covered by that law?

Mr. FASCELL. The gentleman is absolutely correct in his question, and the answer is that they do not have any right. They are not even encompassed in the statute which I just read to you.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. Do I understand that the Civil Service Commission asserts its right under the present statute to refuse to give any information?

Mr. FASCELL. This statute, title 5, United States Code, section 22, is one of the legal authorities cited by the Civil Service Commission for its right to withhold information.

Mr. ROGERS of Colorado. Then, if we adopt this legislation, H. R. 2767, would the Civil Service Commission then be authorized to release information that its investigators may collect as it relates to a prospective employee of the Federal Government?

Mr. FASCELL. The answer to that is that the Civil Service Commission nor any other agency would be required to release any information where proper authority exists to withhold that information. The only thing that they cannot do would be to rely on title 5, United States Code, section 22 as authority to withhold it. If they have the right under executive privilege, if it is granted to them, or under a congressional act to withhold information, then they may properly do so, according to their point of view, but under this statute as amended by the proposed legislation they cannot properly or legally be able to cite title 5, United States Code, section 22, as authority to withhold.

Mr. ROGERS of Colorado. If the Civil Service Commission cannot cite this section and the amendments proposed to it and the confidential agent of the Civil Service Commission would come to me and ask me what I know about an individual and I honestly told him and he made a report to the Civil Service Commission, would the Civil Service Commission then, upon demand by anybody who wanted to learn about that record, be required to deliver the record of what I told the Civil Service Commission agent?

Mr. FASCELL. Not by virtue of this statute, no, sir.

Mr. ROGERS of Colorado. Well, is there any protection under the statute that they would be compelled to withhold it?

The CHAIRMAN. The time of the gentleman from Florida has expired.

(Mr. FASCELL, at the request of Mr. Moss, was permitted to proceed for 5 additional minutes.)

Mr. FASCELL. Let me proceed with my testimony, because the basic answer to the gentleman's question is this: That if the Civil Service Commission by statute or by executive privilege has the right to withhold information, this statute does not change that position in any respect. All it prohibits is the use of this statute to draft a regulation which would prohibit the release of that information.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield further?

Mr. FASCELL. I yield further.

Mr. ROGERS of Colorado. I heard some reference made to—what was it—78 statutes which authorize the withholding of information; is that correct?

Mr. FASCELL. I believe it is 70-some; I am not sure.

Mr. ROGERS of Colorado. Is the gentleman in a position to tell the Committee whether or not any of the agencies whose duty it is to investigate an individual before he is employed and tells the person being interviewed that it is confidential, that they just want a report on it—is there anything to keep that secret as the agent represents to the person he is interviewing?

Mr. FASCELL. Yes. All the Department has got to do is to say that it refuses to release the information.

Mr. ROGERS of Colorado. If that is true, what is the necessity of this proposed legislation?

Mr. FASCELL. Because under the present system they are citing this statute as legal authority for that, and in our opinion this statute is not legal authority to do that. If they want to claim a privilege, let them claim it, either under the Executive privilege or under the specific statute of Congress, but let us not permit them to use a statute which does not have this intent and never had that intent. That is the reason.

Mr. VORYS. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield.

Mr. VORYS. I want to ask about the last phrase of the proposed amendment which says:

> This section does not authorize limiting the availability of records to the public.

Mr. FASCELL. That is right.

Mr. VORYS. This is supposed to be a housekeeping statute?

Mr. FASCELL. That is correct.

Mr. VORYS. Suppose a tourist goes up to one of these buildings and he says, "I want to see a letter that Joe Doakes wrote to the secretary?" And they say, "Why, it is closing time." "Well, who told you to close now?" "Why, the head of the department." "All right, I want in. You have no authority to keep me from getting in." And the fellow gets in. They say to him, "That is back in the files."

Mr. FASCELL. The gentleman is not correct, because the very purpose of the statute is to give the department head the authority to regulate the conduct of the operation of his department. It has nothing to do with, it is separate and apart completely from the question of whether or not information is or is not to be made available to a particular individual. If he wants to close down at five o'clock, he has that authority.

Mr. VORYS. But custody and use of papers and records involves denying availability of records to the public just as a matter of convenience. I am not talking about withholding information.

Mr. FASCELL. I understand the gentleman, and he is correct. This is the intent of the statute. The intent of the statute is to empower—that is the reason Congress passed it—to empower a department head to prescribe, subject only to the rule of reasonableness, those regulations for the conduct of his office, for the operation of his department and the conduct of his employees and the custody, use and preservation of his records.

Mr. VORYS. But once this amendment is adopted he may no longer limit the availability of records to the public.

Mr. FASCELL. The gentleman is absolutely incorrect; I beg to differ with him.

Mr. VORYS. That is what the amendment says.

Mr. FASCELL. No, sir; the gentleman is absolutely incorrect; not inconsistent with law and regulations. In other words, if it is available under other law, or if it is withheld under other law, that is the criterion. It is not that he shall have the power under this law to deny access to information or the records, nor is the criterion under this law that he shall have the right to make it available.

Mr. VORYS. Under this law, then, he could not limit the availability of records, which means he could not say that the public may not go to those files because they have got to be available.

Mr. FASCELL. If the information under other law is normally public information the department head under

this statute shall have the right to prescribe reasonable regulations before that information shall be accessible to the public.

Mr. Chairman, let me continue. So we see how the problem came about. We have a specific statute, limited in its scope to the executive departments themselves, but claimed as legal authority by other departments and agencies which are not even included in the statute.

That is point No. 1.

Second, we find that it was being used as a direct means of the department head's refusing to permit information to be made available. It is one thing to regulate the manner in which information shall be made accessible and available. It is another thing to see the door closed. You cannot get it under the authority of this statute.

Let us see what other people have had to say about this, first of all the very able general counsel of one of our executive departments, Mr. A. McGregor Goff, of the Post Office Department, who said in his testimony, appearing in part 11, page 2548, third and fourth paragraphs:

Now, it is my position, it has been my position from the time I first appeared before this committee on the subject for which it was appointed, that title 5, United States Code, section 22 applies only to subordinates. It doesn't have anything to do with the basic right or lack of right to withhold information. It doesn't apply to the head of the department at all.

That is, it does not apply to the head of the department in affecting his right to determine whether or not information shall or shall not be made available, but it does give him the authority of Congress to prescribe regulations for the operation of his department and for the custody and use and preservation of his records.

The Attorney General of the United States in testifying before a committee of the other body had this to say:

So long as this amendment does not impair executive privilege, "All it would do is prevent people from citing the statute incorrectly." The refusal to provide information should not be based on this statute.

He has stated absolutely, as clearly and concisely as you can possibly state it, what the case is with respect to this legislation. It is just that simple. The department head shall have the right to prescribe whatever reasonable regulations he may deem necessary. Congress gave him that right. But this statute shall not be used as authority to say, "You shall not have the information." If he wants to take that right upon himself as part of the executive branch he may do so. This is another question to be decided at another time. If Congress limits the accessibility of information by statute, that is a separate and independent question. So all we are doing is setting the record straight by this legislation, by saying that this particular section shall not be used as authority to deny or limit information. This bill would solve that problem very simply.

It will be some time yet before we get into the major problem of the availability of information to the Congress, the denial of that information by the executive branch of the Government, by getting into the question of the prerogatives of the executive branch under claimed constitutional powers to withhold per se whatever information the executive thinks might be necessary. Those are entirely separate questions. This legislation is limited in its scope. It sets the record straight with respect to one particular section of the statute, clearly identifiable, and should not in any way be confused. No amendments are necessary to correct present legislation because by its passage it will clarify the present situation.

Mr. HOFFMAN. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa [Mr. GROSS].

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I am not a lawyer and I have no intention of attempting to discuss the legal aspects of this proposed bill. I am, I hope, a common, garden-variety Member of Congress, and as such I am completely fed up with the withholding of information from Members of Congress and others.

I want to approach this right to know proposal from that standpoint, and perhaps I can point up what I have to say by reading a letter which appears in the hearings on this bill. It is listed as exhibit 5:

The White House today made public the following letter from the President to the Honorable Eric A. Johnston:

THE WHITE HOUSE,
January 11, 1958.

HON. ERIC A. JOHNSTON,
1600 I Street NW.,
Washington, D. C.

DEAR ERIC: In recent weeks there have come to the White House many inquiries with respect to the foreign aspects of our national security. They indicate a natural and keen desire to receive fuller information in these particular fields.

Now, listen to this:

In our free society the Government has a duty to keep the people informed on what it proposes to do and why. Without full public awareness it is difficult for the Nation to put forward maximum effort and obtain maximum results. During your service with the Government as Chairman of the International Development Advisory Board and through your travels abroad you have gained firsthand knowledge of our economic development and security problems.

In the light of the numerous requests that I have received, it would be highly gratifying to me and a great service to the Nation if you would be willing to call in Washington a conference of business and organization leaders, bipartisan in character, to explore means of conveying to our citizens a fuller flow of information on the foreign aspects of our national security.

I do hope that you will feel that you can give the time to do this.

Sincerely,

DWIGHT D. EISENHOWER.

Mr. HOFFMAN. Mr. Chairman, will the gentleman yield for a question?

Mr. GROSS. I yield.

Mr. HOFFMAN. Are you speaking on this bill?

Mr. GROSS. Yes. I read this letter because it is to be found in the hearings before your committee listed as exhibit No. 5 pointing out, I assume, the willingness of the White House to provide full information to the public. That is what the letter says. Now then, and in the first place, the public heard only one side of the foreign-aid issue at the meeting Eric Johnston promoted in Washington last February. The public heard nothing about the boondoggles that have occurred under the foreign-aid program. But, more to the point—I have been trying to find out who financed this foreign-aid show—this propaganda extravaganza—what funds were used to put the show on the road? I assume with a letter of this kind to be found in the record in connection with this right-to-know bill that an ordinary Member of Congress could contact Eric Johnston or someone in his setup and find out without the slightest trouble, where the funds came from that were necessary to start the foreign-aid propaganda outfit.

Mr. HOFFMAN. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield.

Mr. HOFFMAN. Am I correct in assuming then that what you are telling us is that the executive department in this case gave us altogether too much information and used public funds to do it?

Mr. GROSS. They gave too much information on one side of the picture and withheld all of it on the other. The Congress appropriates the money that is expended by the White House and, I believe, the gentleman will agree that a Member of Congress—even a common garden variety Member of Congress—ought to be able to call up and ascertain what funds were used to promote an enterprise of this kind.

Mr. HOFFMAN. Just as a Member of the Congress ought to be permitted to learn how counterpart funds are used.

Mr. GROSS. That is right, and I challenge any Member here on the floor of the House today to tell me where the funds came from that set the stage for propaganda meeting, including a luncheon and dinner that was held in Washington in February.

If any Member knows, will he please rise and tell me because I have been trying to obtain the information.

Because the International Development Advisory Board was mentioned in the President's letter, together with the part that Eric Johnston played in that setup, which is supported by tax money, I wrote to Mr. James Smith, Director of the International Cooperation Administration, on February 28 and asked him among other things to please provide me with a report covering each meeting of the Board. On March 20, nearly a month later, a Mr. Guilford Jameson, Deputy Director for Congressional Relations, replied. I will quote only briefly from his letter to me. He said:

The International Advisory Board was established in September 1950.

Then, he says this:

As for the number of meetings which have been held by the Board since its inception, I regret that our files are not complete prior to 1953.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GROSS. Mr. Chairman, will the gentleman from Michigan yield me additional time?

Mr. HOFFMAN. Mr. Chairman, how much time will the gentleman from Iowa want?

Mr. GROSS. Five minutes, if possible.

Mr. HOFFMAN. I cannot deny the additional time to the gentleman.

Mr. GROSS. I thank the gentleman.

As to the number of meetings which have been held by the Board since its inception, I regret that our files are not complete prior to 1953.

Twenty-four meetings have been held since September 1953 on the following dates: September 23, 1953; November 30, 1953; January 25, 1954; March 22, 1954; July 19, 1954; September 20, 1954; January 12, 1955; April 18, 1955; June 27, 1955; November 29, 1955; January 30, 1956; April 13, 1956; June 7, 1956; August 6, 1956; September 11, 1956; October 29 and 30, 1956; November 30, 1956; December 13, 1956; January 24, 1957; February 10, 1957; April 2, 1957; May 27, 1957; July 26, 1957; and September 16, 1957.

And believe it or not, they either could not or would not provide me with a report covering a single one of those Board meetings.

I support this bill. I do not believe it goes far enough, but I support it in the hope that it will do something to stop the process of wearing out Members of Congress and others who are attempting to obtain information to which they are entitled. What can be classified about what went on in a board meeting of the International Development Advisory Board? If some part is classified why do they not provide the report and state that which is classified?

Mr. HOFFMAN. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I will be glad to yield to the distinguished gentleman.

Mr. HOFFMAN. You are talking about information sought from the President.

Mr. GROSS. I am talking about information I sought from the International Cooperation Administration or one of its various appendages.

Mr. HOFFMAN. Do you not realize that this legislation does not have a thing to do with that at all?

Mr. GROSS. No; I do not so understand.

Mr. HOFFMAN. This applies only to the heads of departments.

Mr. GROSS. All right. I have written to the head of the International Cooperation Administration.

Mr. HOFFMAN. But that is not an executive department.

Mr. GROSS. Then let us take the State Department. I have been trying to find out how a flying fortress, loaded with arms, which was compelled to land in Algeria because of engine trouble a few weeks ago—how it was that this 4-engine bomber came into the hands of the Government of Israel, and was allegedly flying from Tel Aviv to Venezuela, piloted by 2 Americans. The response I got from the State Department is, "We do not know." The response I got from the Defense Department is in effect, "We do not know."

Mr. HOFFMAN. Will the gentleman yield further?

Mr. GROSS. I yield.

Mr. HOFFMAN. All you have to do is to take advantage of the rules of the House and put in a privileged resolution and within 7 days they have to give it to you.

Mr. GROSS. Thank you. That is another part of the wearing out process that I do not like. With all the millions that are being spent on the Central Intelligence Agency, the intelligence units in the Defense Department and the State Department and various other agencies, there should be no trouble whatever in ascertaining how the Government of Israel came into possession of this bomber; where the cargo of arms came from, and who issued the passports and under what conditions to the American pilot and copilot.

Mr. HOFFMAN. Will the gentleman yield again?

Mr. GROSS. I yield.

Mr. HOFFMAN. This bill will not help you on that. If we adopt H. R. 2767 it would not have anything to do with it, because what you are talking about is information that comes to the Executive and his department. The only way you can get it is through an amendment to the Constitution.

The Speaker of the House asks: Are you going to impeach the President? That is your remedy.

Mr. GROSS. I am going to vote for this bill in the hope that it will do some good. I will vote for anything that bears any similarity to it. In other words, I want to serve notice on the various agencies of the Government that no longer are Members of Congress, the press, and the public to be ignored when information is sought from the various agencies of the Government—information to which all the people of this country are entitled and which will in no sense endanger our security.

Mr. HOFFMAN. Mr. Chairman, I yield 10 minutes to the gentleman from Michigan [Mr. MEADER].

Mr. MEADER. Mr. Chairman, I should like the attention of the gentleman from California [Mr. Moss], the sponsor of the measure. I would like to read three paragraphs from the additional views I submitted to the report which appear upon page 62 of the report. I said:

I believe there is unanimous sentiment in the Government Operations Committee on the following points:

1. That departments and agencies of the Government have construed section 161 of the Revised Statutes to authorize them to withhold information from the public and to limit the availability of records to the public.

2. That this interpretation is a strained and erroneous interpretation of the intent of Congress in section 161 of the Revised Statutes which merely authorized department heads to make regulations governing day-to-day operation of the department—a so-called housekeeping function; and that section 161 of the Revised Statutes was not intended to deal with the authority to release or withhold information or records.

3. That departments henceforth should be prevented from relying upon section 161 of the Revised Statutes as authority for denying access to records or information, but that authority derived from any other sources, such as the Constitution, statutes, or Executive orders, to withhold information or limit the availability of records would not in any way be affected by the language of H. R. 2767.

I now yield to the gentleman from California to state whether or not those three points as I have set them forth in my additional views in the report on this measure accurately state what he understands to be the consensus of the judgment of the members of the Government Operations Committee in reporting out this legislation?

Mr. MOSS. That is correct as I interpret it.

Mr. MEADER. Very well. Then, it seems to me the question that is before the House and the committee at this time is, what language shall we use to carry out those purposes? The gentleman from Michigan [Mr. HOFFMAN], in the discussion of the matter in the committee, raised questions about the interpretation of the language of H. R. 2767. It is a simple little statement; it does not take very long to read it; it is just one sentence:

This section does not authorize withholding information from the public or limiting the availability of records to the public.

It seems quite simple on its face and that it would carry out the purposes which I have just enumerated and which the sponsor on record has said correctly, as he understands it, reflect the judgment of the Government Operations Committee. But look at the language a little more carefully and you see a lot of things in there that do not appear at first glance.

"This section does not authorize withholding information." Just what does that mean? That is written in the basic law of the land; it is written into what the gentleman from Florida has very eloquently and accurately described as a general statute applicable to all departments of the Government, not independent agencies but the regular established departments; and what does it state? It states:

This section does not authorize withholding information.

I say it is perfectly conceivable that a court might interpret that language to state: "The withholding of information is not authorized. The withholding of information is forbidden; the withholding of information is prohibited."

That language being in a general statute applicable to all departments will take precedence over any other statutes that are in existence at the time. Being the most recent pronouncement of the Congress, the court could say that the Congress has now spoken and has repealed or amended the other statutes that might be applicable to the subject and, therefore, the 78 statutes that have been referred to will be affected by this language. I do not want to see that interpretation made by a court. If I were a court I would not so

interpret it, but being familiar with some court decisions recently that contain certain interpretations I never would have given, I am not here to say that no court could not misinterpret this language in the fashion I have just described.

If our purpose is clear and if it is agreed upon, why do we not say so in the statute? Opponents of my amendment say, "well, look in the report." The committee did add, you will notice at the bottom of the majority report on page 12, this sentence, and I will say this is an achievement, if nothing more, of those who sought to improve the language. The full Government Operations Committee added in committee, after the amendment which I propose to offer here later had been defeated, the following:

> The application of this amendment is limited to Revised Statutes 161 (5 U. S. C. 22) and should not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting the availability of information or records to the public.

That is an improvement. But why do we have to resort to a committee report or debates on the floor or possibly even to debates in the executive sessions of the committee to find out what Congress had in mind? Why not say so plainly in the language that we write here? That is all my amendment proposes.

I want to point out that this statute, as the gentleman from Florida so ably described, is a statute of general application to the departments. What does it deal with? It deals with the making of regulations. Section 161 has to do with authorizing department heads to make regulations, and that is all it has to do with. It does not have to do with security, the release or publication of information or anything else. It has to do with prescribing regulations. Congress made a general delegation of authority to every department head to make regulations. To do what? Four things. To govern his department, for the conduct of its officers and clerks, the distribution and performance of its business and for the custody, use, and preservation of records, papers, and property appertaining to it.

Now, having made this delegation of authority to make regulations, if you want to limit it in some way how do you do it? You put on a proviso which limits the general grant of authority that you have already made. That is what my amendment proposes to do. It replaces the language contained in the bill H. R. 2767 with the following language which appears on the last page of the report as part of my additional views, page 63:

> *Provided,* That no regulation shall be prescribed under this section authorizing or directing the withholding of information from the public or limiting the availability of records to the public.

That is clearly a limitation upon section 161 and not anything else. It could not possibly be construed as affecting any of the other 78 statutes, because it is confined specifically to the power to issue regulations granted in section 161 and could not limit anything else except that particular section.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Florida.

Mr. FASCELL. Will the gentleman admit that the present section of the law which we seek to amend by this legislation now states specifically that the head of the department shall have the right to prescribe regulations which are not inconsistent with law?

Mr. MEADER. Well, the gentleman is just reading the language.

Mr. FASCELL. The statute does say that. Now, what is the gentleman's interpretation of the proviso now in the statute which says that the regulations of the department head shall not be inconsistent with existing law?

Mr. MEADER. If the gentleman will read again the language of the Moss bill, he will see that that one sentence has not anything to do with and does not refer in any sense to the authority to issue regulations. It says "This section does not authorize withholding information."

Mr. FASCELL. Exactly.

Mr. MEADER. It does not purport to be limited to the power granted in the previous sentence of that law. It is general language applicable generally to departments. I think it is ambiguous, I think it is defective, and I think we are under an obligation as legislators to clean this language up and make it mean what we want it to mean and not pass a bill containing unskillful language the meaning and effects of which are not clear.

Mr. MOSS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I believe every Member of this House and the people we represent owe a great debt to the distinguished and hardworking Member from California [Mr. Moss].

As chairman of the Government Operations Subcommittee on Information, he has helped lead the way toward finding a practical and workable way to express the right of Americans to know what is going on in their Federal Government.

If information about our Government is kept from the people and their own representatives in Congress and in the press, the very lifeblood of our democracy is stopped. It is the people's right to know and make decisions that make a democracy. Without this right, free from unreasonable restraints, we have in effect star chambers and dictatorships rather than democracy.

Democracy cannot operate in dark corners and in secrecy. And our Nation cannot lead the free world with one arm tied behind its back—tied by the fear of some that the people of this Nation are not wise enuogh or responsible enough to know the facts about our Government.

Democracy has taken its place in history as the finest form of government man has been able to devise, because it jealously protects the rights of individual persons. The withholding of information from our people, from Congress, and from the press is a negation of those rights. The right to know is fundamental to every fiber of our democraitc freedom.

Many of us here in the House at this moment have had discouraging and frustrating experiences with the executive agencies of the Federal Government regarding the withholding of information. My own personal experience includes failure to receive even an acknowledgement to my official, written inquiries made to a Cabinet officer of this administration. I feel sure that the list we could form today would be a long one if we had the time to put all our experiences together.

We all know that the old and wornout cry that all this information is essential to the protection of our country does not jibe with the actual truth. The majority of information requested by Members of Congress—and withheld—does not vitally concern the well being of our Defense Establishment. I would submit for the consideration of the House that the withholding of this information may well be to protect someone—but not the people of these United States.

Mr. HOFFMAN. Mr. Chairman, I yield such time as she may desire to the gentlewoman from New Jersey [Mrs. DWYER].

Mrs. DWYER. Mr. Chairman, I rise to express my strong support of the pending legislaton and to associate myself with the views of others who support it.

Without repeating in detail the many arguments being advanced on behalf of this legislation, I believe there are certain aspects of it which should be emphasized.

First, this is emphatically not partisan legislation. The unreasonable withholding of information is a temptation that Government officials in every recent administration have succumbed to.

Second, the chief value involved in this legislation is one of principle. No one will seriously claim that this bill will once and for all solve the problem of the proper limits to the public's right to know. But it is an important—because it is a first—step in the right direction. By it, the Congress will have indicated its support of the principle that the people in a democracy, if they are to use their power wisely, must have access to complete and accurate information about the public's business.

Third, this legislation will, in effect, remove the temptation for Government officials to rely for their authority in this field upon a statute never intended to be so used. And it will require them in turn to rely on authority—which is certainly adequate to the purpose—which is more directly and specifically appropriate.

There are occasions when certain information, in the public interest, must be withheld and retained in varying degress of secrecy. No responsible person will deny this. But it is important, in a Government of law, that the authority to so withhold information be clearly and specifically stated and that legal loopholes not be utilized to cover such an

immensely broad and important area of our public life.

It seems to me, Mr. Chairman, that if any benefit of doubt is to be accorded here today it should be given to the people and to their press. On the great occasions of our national patriotic holidays, we are often fond of declaiming about the health and maturity of our form of government. We are presented, in this bill, with an opportunity to act on these convictions.

The people are not perfect, nor is the public press all-wise. Neither, however, is this or any other Government of sufficient wisdom and integrity to be granted unlimited power over what our people shall know about their own business.

This is moderate, responsible and necessary legislation, Mr. Chairman. I am happy to support it, as I did earlier in the Committee on Government Operations.

Mr. HOFFMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri [Mr. CURTIS].

Mr. CURTIS of Missouri. Mr. Chairman, I have asked for this time in order to ask a question of the chairman of the committee or whomever on the committee might answer. I cannot understand what the last clause in this bill does that is not contained in the forepart of the sentence. In other words, it says "or limiting the availability of records to the public." Now, what does that do that the first part does not do? The first part says "This section does not authorize withholding information from the public." Now, is that not comprehensive? What do you gain by adding this latter clause?

Mr. FASCELL. I agree with the gentleman. He is reading the so-called Meader amendment, and I do not think it adds anything, because it is unnecessary.

Mr. CURTIS of Missouri. I am not talking about the Meader amendment. I am talking about the bill itself. The forepart of the sentence reads, "This section does not authorize withholding information from the public." My question is, If you happened to put a period there, do you not accomplish everything that you want to? Adding "or limiting the availability of records to the public"—what does that add that is not included in the forepart?

Mr. FASCELL. Only for the purpose of clarification to determine the distinction between information and records as such.

Mr. CURTIS of Missouri. Would not "information" broadly interpreted include records?

Mr. FASCELL. That is debatable, and in order to clarify the point you would have to amend the present statute by a definition of what is "information."

Mr. CURTIS of Missouri. Then why not say "withholding information and records?" The reason I suggest that is this. I have been impressed by the statements made on using the word "availability" for this reason. Granting the availability is housekeeping in itself; when you limit the availability, you limit the housekeeping and I am afraid you get into trouble there. If what you want to do is to get the records, why not say that this section does not authorize withholding information and records from the public? I am just asking for information.

Mr. FASCELL. The point is, on the question of definition of "information" and since the present statute uses the words "records," that is the reason for including both of them. It does not impinge upon the right of the department head to regulate reasonably the availability of records as long as it is not construed as a definite withholding permanently.

Mr. CURTIS of Missouri. I would like to suggest that the committee consider my suggestion because I am afraid the word "availability" even though the committee did not intend it, might actually be limiting the housekeeping that is necessary. I think you would accomplish what you want to accomplish—in fact it would really strengthen the purpose—if you said: "This section does not authorize withholding information and records from the public." Then you have it and anybody who tries to withhold information under whatever guise would come under this ban.

Mr. FASCELL. I would not be ready to pass judgment upon the amendment the gentleman suggests because of the fact that it might impinge upon the rights of the department head to prescribe reasonable regulations, which right he should have.

Mr. CURTIS of Missouri. That is what I am trying to provide, that he could do that. And I am afraid the language that the committee has used could mean that he would run into trouble. In any event, I have my question answered. I wanted to bring it out because it had disturbed me.

Mr. MOSS. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. WRIGHT].

(Mr. WRIGHT asked and was given permission to revise and extend his remarks.)

Mr. WRIGHT. Mr. Chairman, I rise in support of this bill. Its purpose is to protect the public's right to information by penetrating the fog of secrecy which today enshrouds many Government activities.

After lengthy hearings by the special House subcommittee in which testimony was taken from hundreds of witnesses, the gentleman from California [Mr. Moss] and his colleagues have drafted this specific legislative proposal for lifting the curtain which has descended between the public and its Government. I should like to congratulate the committee on a job well done. This bill, the first tangible result of the committee's work, would destroy the most commonly used pretext for denying the public access to public files and records.

At the outset of the hearings, I am told that members of the special subcommittee had believed it would be necessary to develop an entire new Federal public records law to curb a growing list of abuses by administrative agencies. It soon was discovered, however, that the tortured misconstruction of an ancient statute was the real fountainhead of creeping Federal secretiveness.

The housekeeping statute, first adopted in 1789 to get General Washington's administration underway, grants to departments heads the power to prescribe regulations for "the custody, use, and preservation of records, papers, and property."

In instance after instance, the subcommittee found, agency heads now are claiming that this benign provision gives them authority to keep their records hidden from public view. The proposed remedy would blast away this roadblock by adding one single sentence:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

This proposal would not affect military information or other details withheld to protect national security. There are numerous laws on the books to preserve the inviolability of such things as military secrets, income-tax returns, inventions, trade secrets, and the like. Yet the housekeeping statute has become a convenient blanket to cover many things which the Congress in its wisdom has never seen any reason to include in the secrecy laws.

In June of 1956, the General Counsel of the Agriculture Department even claimed that this gave him the authority to withhold information from the Congress. Through the increasing tendency to take vague refuge in this broad provision, a forest of secrecy has grown up to obscure many Government functions from the public view.

Among the more bizarre examples of what has happened are some pure slapstick comedy illustrations of confused secrecy. One example was an Air Force telephone recording which gave weather forecasts to anyone dialing a publicly listed telephone number. The recording closed with a warning that the information was classified.

Recently the subcommittee discovered that some work which an amateur archer had done on bows and arrows was classified as confidential. The Pentagon, in another case, had refused to permit publication of a book on military tactics of the Revolutionary War.

Undoubtedly more serious are rulings which prohibit scientists working in one military service, though they have top secret clearance, from knowing what is being done in the same field in another service. This has been costly in time and money, as it has resulted in expensive and time-consuming duplication in research.

Nor is the military by any means the only offender. The investigations of the subcommittee disclose an atmosphere of secrecy pervading almost every agency of the Government. Newsmen in particular have been critical of the increased difficulties they encounter in gaining access to public records. The freedom of the press is involved, a principle dating back to the trial of Editor John Peter Zenger in 1735.

The people of the United States are entitled to know what goes on in their Government. They pay for it. It belongs to them. I hope this bill will pass and that it will open the way for other

reforms designed to keep the Government closer to the people.

Mr. MOSS. Mr. Chairman, I have no further requests for time.

Mr. HOFFMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. HENDERSON].

Mr. HENDERSON. Mr. Chairman, the discussion that has been had on the bill thus far raises a question with me whether or not we are just arguing in an academic vacuum, because the point has been made more than once that actually what we are doing by this proposed legislation is not prohibiting the departments of government from withholding information, but saying that they shall not use section 161 as the crutch upon which to lean to withhold that information.

I should like to ask someone of the committee or the subcommittee to give one specific instance in which this proposed legislation could be used by a person desiring information to obtain that information.

Mr. MOSS. Mr. Chairman, I do not think I could give a specific instance where this could be used to force the production of information. I think that might very well be a question that the courts would have to decide. But I can assure the gentleman that the intent here is that it not be cited as the authority for the withholding of information, as is done far too frequently.

Mr. HENDERSON. Actually, then, the legislation we are acting upon will not provide any more freedom of information than the public now possesses?

Mr. MOSS. I said at the beginning of the debate that this was a very timid step, a bare minimum which the Congress should undertake to express its views. I have not contended that this would open up broad areas of information. I hope that it will require the departments of Government merely to cite appropriate legal authority for the withholdings.

Mr. HENDERSON. I thank the gentleman for his explanation. I believe this is a field in which we should move carefully. It is my hope that as we discuss and pass upon this legislation we also be very careful that, as the gentleman from Ohio [Mr. VORYS] has said, we not do something that might enlarge, beyond the concept that we have in mind, the time and circumstances for making information available.

Certainly the departments of Government must retain the right to say at what hour and under what circumstances information shall be made available. I am terribly fearful that with the language here it might be construed as suggesting that a department must open up its place of business at midnight because I might want to see a letter from someone.

Mr. HOFFMAN. Mr. Chairman, I yield myself one minute to answer that question.

What his amendment does is to say to the executive department, "Open up the door." When we have a quorum call, the doors are locked. That means that no one gets in or out. When the Speaker orders them opened, what happens? Everybody goes through, in and out. When you take from the departments the authority to deny any information of any kind, with no exception, you throw their records wide open. I go down there and I take a copy of this act, if it becomes an act. I demand a record or paper. The gentleman from New York—who is in the department we will assume—says, "You can't see it." I say, "You see this? A copy of H. R. 2767. Congress passed that. Let me in. Give me what I want."

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN. I yield to the gentleman from New York.

Mr. REED. I have been a little worried about this bill. There are a great many people in the country who might call upon their congressmen to get information. You will have a lot of cranks asking for information. I have not had much trouble in 40 years in getting information from the departments.

Mr. HOFFMAN. I thank the gentleman.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ALGER].

Mr. ALGER. Mr. Chairman, I take this time to direct a question to the committee. I see on page 63 of the report, and I am now looking at it, the Meader amendment. I am rather impressed with the arguments that are made for it. I have listened to all of this debate. I am wondering, is the committee opposed to this amendment? Does not this accomplish also the objective of the amendment the gentleman has in the current bill before us?

Mr. MOSS. I would say to the gentleman that the committee rejected this overwhelmingly in the full committee. I am opposed to it because in my judgment it would create confusion rather than resolve any doubts. I think it would raise more questions than it would settle. Specifically, it would raise a serious question as to the authority for the head of the department to prescribe necessary regulations for the custody, use, and preservation if in the course of prescribing those regulations there might be a tendency to limit information which under other authority could be withheld. I think it would, as I say, create confusion rather than resolve the doubts which I know are held in good faith by the gentleman from Michigan [Mr. MEADER].

Mr. ALGER. I certainly respect the gentleman's viewpoint, but I do not grasp the gentleman's disagreement with the Meader amendment.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman from Florida.

Mr. FASCELL. If the gentleman will read the Meader amendment, it says, "Provided, that no regulation."

Thus, the key difference between the Meader amendment and the proposed legislation is that the amendment refers to the regulation whereas the proposed legislation makes an affirmative statement that this section which is amended shall not be used. Does the gentleman see the difference?

Mr. ALGER. I believe we are splitting hairs. I am really lost at this point because I have tried to grasp the significance of both and their difference.

Mr. MEADER. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield.

Mr. MEADER. The statement just made by the gentleman from Florida interested me because the section which is amended, thati s section 161, deals with nothing but the authority to issue regulations, and if my amendment would be limited to the right to make regulations, but the Moss bill goes beyond that, then I am concerned that it intends to reach something beyond section 161.

Mr. ALGER. I thank the gentleman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOFFMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I am in sympathy with the purposes of this legislation, but I have the same fear about it as expressed by the gentleman from Missouri [Mr. CURTIS] and by some others on the floor. I fear that the last phrase of the bill, that is, the words "limiting the availability of records to the public" is in conflict with the first part of the section and any regulation that a public official would attempt to promulgate would be or could be construed as limiting the availability of records to the public. Moreover, I am also afraid of the effect of this legislation on other laws that are on the books limiting information under special circumstances.

So, Mr. Chairman, at the proper time I would like to offer an amendment which I think will not change the effect of the bill at all, but will do what you say you want to do. That amendment would be this. It would insert after the word "information" the words "and records" and then strike out after the word "public" and all the rest of the sentence and insert in lieu thereof "in a manner not inconsistent with law." So that the bill would then read:

This section does not authorize withholding information and records from the public in a manner not inconsistent with law.

I think that would clarify exactly what you intend to do and would not leave up in the air this question that has been debated so strongly on the floor this afternoon as to just what effect this has on existing laws and just what liberties it may or may not give to the public official with respect to these records and who could or who could not get at certain records which we would not want to be made available. In other words, I want us to express exactly what we mean and not leave it to the courts or to the public officials or the public involved with it to place upon it their own intent.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield.

Mr. FASCELL. Will the gentleman admit that the proposed legislation starts out by saying that section 161 of the Revised Statutes is amended and nothing else?

Mr. HYDE. I understand that.

Mr. FASCELL. Will the gentleman further admit that the present section

of law which is sought to be amended now says that no regulation may be promulgated which is inconsistent with law?

Mr. HYDE. Yes, and after that sentence in the present law, you put a period and then by this bill you say that all that has been said before does not authorize the withholding of any information or the limiting of the availability of records. The period is important there.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOFFMAN. Mr. Chairman, I yield such time as he may desire to the gentleman from Florida [Mr. CRAMER].

Mr. CRAMER. Mr. Chairman, I rise in support in principal of H. R. 2767, having introduced H. R. 11344 myself which is identical with the bill before us. Although I have no pride in authorship necessarily I do believe that Congress should take some action in this field and introduced my bill to indicate clearly my strong belief on the matter.

It must first be admitted that there are many instances when executive discretion must be exercised to deny access to certain Government information for the security and welfare of the Nation. This discretion is, of course, inherent in the executive branch and I doubt if Congress could constitutionally pass binding legislation to curtail the exercise of that discretion assuming that it was exercised in good faith and within the limited authority derived from the national security and welfare purposes.

It is my understanding of the pending bill that it is not the intention of the Committee reporting it to infringe upon that separate Executive power, but only to remove one of the weak and improper crutches upon which denial of information has ben resting within many of the departments. Many departments have been citing the section sought to be amended by this bill, title 5, United States Code, section 22, as justification for withholding information. It is doubtful in my mind that this was intended by the First Congress that enacted this section in 1789.

It is interesting as a sidelight that this is one of the few instances in the history of Congress that legislative action of the First Congress has been amended or sought to be amended.

The bill offered does not change the wording of the existing section 22 but clarifies its intent and eliminates its useage in the future as a shield of secrecy when it was never so intended, by adding the wording:

> This section does not authorize withholding information from the public or limiting the availability of records to the public.

This clarifying language should make it clear that Congress does not intend that this section shall be used to deprive the public of proper information.

Of course, it is to be noted that there are in existence in excess of 75 statutes relating to subject matter that can be withheld because of the national security and public welfare which are in no way affected by this bill. There is further the inherent executive authority to withhold when in its discretion this serves the general public welfare and safety, which is a power inherent in the Executive and inviolate from legislative curtailment by the Separation of Powers doctrine under our Constitution. Thus, this bill is not intended to permit indiscriminate rummaging through of Government information contrary to the public interest where Congress had declared it in the public interest to withhold this information. I do not interpret it, either, as an open invitation or legislative authority for demanding any and all information by anyone desiring it, because the bill merely states the intention of Congress that departments in the future shall not use this specific section as justification for denying information.

I further do not interpret it, as has been confirmed today on the floor, as an open invitation for demanding people to require that the agencies make available records at any hour under any circumstances just to accomplish whatever might be the objective of the inquisitor. This bill writes no new rule for the Government agencies as to making available information which does not now exist, but it does clarify the section and puts it in its proper perspective as having no relationship to withholding information.

Under these circumstances, I believe that Congress in favorably considering this bill is acting within its constitutional power, that it is acting in the best interests of the people who have a right to know what is going on in their Government within certain reasonable and well-established limitations, and, that it is not affirmatively infringing upon the Executive prerogatives or legislative sanctions in this field. For these reasons I support this legislation—under the assumption that it is being offered in good faith and not with any intention of criticism of this or any previous Executive administration—for the right of the people to know is above partisan politics and affects all people—of all parties—in all walks of life.

Mr. HOFFMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. MCINTOSH].

Mr. MCINTOSH. Mr. Chairman, I take this time to direct a question to the chairman of the committee following the question with regard to civil-service personnel and security records. We have, over the years, in almost every Government department tremendous amounts of information relating to personnel and private affairs of American citizens. I would like to know whether the chairman can assure us that we are not inadvertently withdrawing protection for personal, private records of individuals now in the hands of Government agencies which are not covered by some of these other 72 laws. In other words, has the staff and the committee satisfied themselves that by withdrawing this, which I think the House feels is being relied upon—by withdrawing this are we leaving any personal or private records open to not being protected under the provisions of some other statute?

Mr. MOSS. First, if you will read page 4 of the report, you will find that the Commission by letter acknowledged their error in claiming authority under this section. So it would obviously have no effect in any way upon the Civil Service Commission. The committee is satisfied that there is an abundance of statutory authority, in some cases excessive authority, for the withholding of highly personal items of information. There is adequate authority under the Administrative Procedures Act. All we are trying to do here is just that you do not use those. We are not going to be crippling any agency by taking that action.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOFFMAN. Mr. Chairman, I yield myself the remainder of the time.

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, the subcommittee and the Committee on Government Operations seem to be greatly concerned about the withholding of information by the departments.

As has been stated several times, the departments have abused the authority given them. There is no question about that. Amendments will be offered asking that the bill be amended so as to require the departments to come up with some reasonable, workable, basic regulation so that the public can get the information to which it is entitled and that without difficulty.

It just happens that the House itself takes a different view about the people's right to know than that now expressed by the committee. How inconsistent can we get? Have we fallen back upon the old statement, "Do as I say and not as I do"? I see smiles on the face of the gentleman from Florida [Mr. FASCELL], and our distinguished and able counsel, Mr. Mitchell. It is a wonder we do not do a little housecleaning on our own before we start wandering so far afield.

Here is what the Star stated:

> The Congress barred the public from 1,131 of its 3,121 hearings.

We shut the door on our own activities and spending. We slammed it shut on those poor people whose Government this is, whose dollars we are using, who the committee says "have a right to know." Why did this committee do it? Why do we, the Congress, claim a privilege which we deny to a department downtown?

The hearings will show this committee wants to know not only what conclusions they reached down there but what they talked about and what they were thinking about, what minutes were taken when the Department held conferences. Where would we get?

Do the people in my district who elected me have a right to know what I tell the office force to inquire about when seeking information? Do the people whose Government this is have a right to ask a judge, a court, what went on in chambers over in the Supreme Court Building, when a decision was being reached? I guess not. Why not? Because it is a separate department of

Government. It is one of the "Big Three."

Does a judge presiding over a trial have a right to ask a jury, "How did you fellows arrive at that verdict?" I guess not. They are a part of the judicial department of this Government.

And so it goes on down the list.

The taxpayers' money. Does the Congress ever tell the taxpayers how their money is spent?

The people's right to know. We have a statute which expressly states that the records of our committees belong to the people, they are public records. The statute states that every Member of the House has the right of access—get that word—"access"—to those records, but when I went to the chairman of a subcommittee of the Committee on Government Operations and under my arm I have my little Thermo-Fax or whatever this picture-taking thing about that size is, and I say, "Let me make a copy of that paper," the chairman says, "No; you cannot use it." But the decisions are to the effect that the right to see, to access, includes the right to copy.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN. I yield.

Mr. MOSS. The gentleman was not referring to the chairman of the Special Subcommittee on Government Information.

Mr. HOFFMAN. No, no, no; oh, no; I love the gentlemen on that subcommittee and I admire them, as much as there can be admiration, of the way you have handled this matter. If any man ever got more political mileage out of an issue than has the gentleman from California [Mr. Moss] has out of this one, I do not know who he is. For almost three years he has been on the front page every day. More power to you. I only wish I had it. That is not using public funds for political purposes. Do not misunderstand me. That is just trying to get the people the things they desire.

Oh, yes; what happened when they would not let me make a copy of a record which the law said I was entitled to have access to? The Speaker sitting in the speaker's chair—presiding—sustained the ruling of the chairman of the subcommittee—but read the ruling as given in my earlier remarks. That was funny, was it not? It would be, if it were not so absurd.

The east front door dim-out over here. Remember how it was all secret? Our minority leader wanted to let the people in on it, but he was overruled and the door was slammed.

The President's reorganization plan was referred to a committee. That meeting was secret.

Mr. Chairman, how much more time have I?

The CHAIRMAN. The gentleman's time has expired.

Mr. MOSS. Mr. Chairman, I yield such time as he may desire to the gentleman from Florida [Mr. HALEY].

Mr. HALEY. Mr. Chairman, apparently we are all in accord that this legislation is needed and is long overdue. I say that it does not go far enough probably, but it is certainly a step in the right direction.

For too long, I think, the various agencies of this Government have denied information not to all Members of Congress, but to some Members, and I think it is high time that the Congress of the United States took such action as it thinks is necessary to inform the people or allow the news media of this country to inform the people of what goes on here in Washington.

Many times these agencies—and the gentleman from Michigan just said he did not know just what this legislation was for except to get more information for the papers, that it would not do anything to assist Members of Congress and the public in obtaining information; I have been denied, as I am sure many Members of Congress have, information not of a highly secret nature, but I think perhaps to cover up some of the faults of the agencies involved, and I think it is about time that the people of this country and the Congress took such measures as are necessary to allow the news media and the Members of Congress to inform the people of what is going on here in Washington in some of these agencies.

Mr. MOSS. Mr. Chairman, I yield such time as he may desire to the gentleman from Connecticut [Mr. MAY].

(Mr. MAY asked and was given permission to revise and extend his remarks.)

Mr. MAY. Mr. Chairman, as a member of the Government Operations Committee, I wish to signify at this time my support of the intent of this legislation. We in Connecticut have recognized the right to know by enacting State statute supporting a similar intent. My Government Operations Committee is taking a similar step in urging Congress to adopt this legislation. I believe it is important that the public be allowed to more easily obtain information that they are truly eligible to receive. Secret, security-type information and other information realistically classified for the protection of the public and their Government is, of course, still protected by 78 other statutes.

However, I feel we should pass this legislation. The true intent must be understood. If so, we will have cleared the air on a subject that is vital to our freedom as expressed in the Constitution.

Mr. MOSS. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I think it well to have the record made completely straight on some of the debate that has gone on here this afternoon. It has been interesting in many cases and enlightening but hardly germane to the issue before the Committee at this moment.

First, let me assure you this has been carefully studied. The drafts were first prepared almost 2 years ago. They have been more broadly submitted for comment than almost any legislation with which I have ever personally dealt. We realized that this was a difficult area, that we should move with extreme care. That is what we have done. In the judgment of the committee this is a proper approach. It is one which clarifies but does not cripple, it opens no doors that should not be opened; it merely requires that the agencies in asserting a right to withhold information seek proper authority.

This was never intended as a withholding statute. It has been twisted, and, as the Attorney General himself stated, "incorrectly cited."

We merely want to clarify the record. We are not going to upset any secrets, we are not going to cripple this Government. I repeat it is an important, but nonetheless timid, first step.

The committee has sought broadly the advice of attorneys within and without the Government. I might add that the representatives of the press who appeared before the committee are certainly in the minority of witnesses. We have had broad hearings with representatives of science, from industry, from Government and educational institutions. We have overlooked no opportunity to get advice and comment. We have not tried to sell any special cause or any one interest. We have merely tried to define the law as it is to determine whether or not it was being abused, and the evidence of abuse is abundant. I do not think the legislation requires amendment, and I think it will be to the credit of this House to pass it today.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. MOSS. Mr. Chairman, I yield such time as he may desire to the gentleman from Ohio [Mr. ASHLEY].

Mr. ASHLEY. Mr. Chairman, I rise in support of H. R. 2767. The urgent necessity for enacting this legislation has become increasingly clear in recent years and for compelling reasons.

The strength of any democratic nation can be measured by the extent to which a self-governing public is accurately informed. The democratic process is essentially an educational process in which enlightened people grow through participation in our Nation's decisions. But people cannot participate in decisions—at least not intelligently—unless they know the facts.

The first condition then, of a successful democracy is an informed people and it is an indispensable and irrefutable part of the Presidential responsibility to make sure the people have the facts no matter how grim and sobering these facts may be.

Despite this indisputable premise, we have witnessed in recent years a deliberate erosion of the basic right of the American people to know—the right of the American people to free access and distribution of factual information.

It is ironic indeed that the very persons whose election to public office reflects an expression of the public's confidence and trust, have seen fit to betray that trust by suppressing and withholding vital information from the very people who elected them to office.

Nothing, in my opinion, has injured us more or struck so deep at the heart of our democracy as this abuse of the people's right to know. The recent record of systematic misrepresentation, concealment, and half-truths has no precedent in American history. It has channeled

American thinking into false complacency; it has encouraged illusions of military and technological supremacy and misrepresented diplomatic setbacks and defeats as triumphs of statesmanship.

To be sure, the Chief Executive possesses—and he should—inherent power to withold certain information when disclosure is deemed to be contrary to the Nation's interest or security. But even this power must be properly exercised, with full recognition of the countervailing powers of the legislative and sensitive awareness of the right of the public to know about its government.

It is, however, the over-assertion of the executive department and agency heads of their statutory power to withhold information not only from the people but from the Congress as well that is most disturbing—the implication being that neither the elected representatives of the people nor the people who elected them are to be trusted.

I submit that the people of America cannot be either responsibly self-governing or responsively secure if they are progressively separated from the information that guides their national leaders.

I prevail upon my colleagues to put an end to this abrogation of the people's right to know by approving H. R. 2767, thereby forestalling any future false construction upon the ancient statute referred to throughout this debate, in order to lend sanction to this high-handed and unwarranted secrecy, and assuring an immediate return to candor, honesty and confidence in the American people, so vital to our continued strength as a democracy.

(Mr. ASHLEY asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. If there are no further requests for time, the Clerk will read the bill for amendment.

The Clerk read as follows:

Be it enacted, etc., That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Mr. HOFFMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOFFMAN of Michigan: On page 1, line 7, strike out the period after the world "public", insert a comma, and add the words "nor shall this section be construed as requiring the giving of information or the making of records available."

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, the gentleman from California [Mr. Moss] in closing general debate stated that section 161 was never intended as anything but a housekeeping statute. Let us see about that. That situation was called to the attention of the Committee earlier in the discussion.

One need but again refer to the action of the Continental Congress on February 22, 1782, when it passed a resolution creating a Department of Foreign Affairs under the direction of a Secretary to the United States of America for the Department of Foreign Affairs—and, in that resolution, provided—

That the books, records, and other papers of the United States that relate to this Department be committed to his custody, to which, and all other papers of his office, any Member of Congress shall have access, provided that no copy shall be taken of matters of a secret nature without the special leave of Congress.

Moreover, the same resolution also provided—

That letters of the Secretary to the ministers of the United States, or ministers of foreign powers which have a direct reference to treaties or conventions proposed to be entered into, or instructions relative thereto, or other great national subjects, shall be submitted to the inspection and receive the approbation of Congress before they shall be transmitted.

Note that it was also expressly provided by this section that to all papers in his office "any Member of Congress shall have access"—limited that broad provision only by the added proviso that "no copy shall be taken of matters of a secret nature without the special leave of Congress."

Note further the provision in the same resolution which also provided that—

Letters—

Of the Secretary—

to the ministers of the United States, or ministers of foreign powers which have a direct reference to treaties or conventions proposed to be entered into, or instructions relative thereto, or other great national subjects, shall be submitted to the inspection and receive the approbation of Congress before they shall be transmitted.

With the knowledge of the legislation passed by the Continental Congress, especially making records of the office of the department head available to the Congress—with only a few exceptions—the Congress, acting under the Constitution when it adopted section 161, deliberately left out any proviso giving Members of Congress, or anyone else, access to the records or information which it is now proposed be thrown wide open to the public.

For 176 years every President from Washington on down to the present occupant of the White House has gone along—and the departments as they were added—until there are now 10—with this statute on the books, and they have ever since exercised the discretion which was granted them when section 161 was written. They have also abused it. Altogether too many rubber stamps have been in use. They should have better regulations in the departments.

But fundamentally the authority rests with the department heads. Now we propose to take it away from them. When based upon the Constitution that we cannot do.

The bill, H. R. 2767, proposes to amend the present section 161 by adding:

This section does not authorize withholding information from the public or limiting the availability of records to the public.

The amendment now proposed reads:

Nor shall this section be construed as requiring the giving of information or the making of records available.

That is to say, the purpose of this amendment is to prevent section 161 as proposed to be amended, being used as the opening wedge in the door, an opening which would require the departments to give to anyone and to everyone any and all information he may desire, a procedure which is not practicable. Suppose every Member—unlikely but possible—on this side went down the same day and we all asked certain questions. The department answering could not attend to its own duties while giving each of us that information. Someone, somewhere, must have authority to determine what is to be given out and what is not—who better able than department heads.

Moreover, the bill as written does not exclude any type of information, and the subcommittee's witnesses, all of them, conceded that there is certain information relating to treaties, certain information relating to matters of national defense, and several others, to which no one is entitled.

The committee admits that, but yet it proposes legislation which would throw wide open the door through which anyone and everyone might enter.

The legislation as drafted, while the stated purpose is admirable, the remedy here proposed is totally wrong. It attempts to do something which cannot be done in this way or manner. It attempts to override the constitutional provisions which created the executive department as a separate and, you might say, independent department, the judge of its own activities.

The Speaker of the House and the majority leader described, in May of 1948, and as today quoted, the existence of authority, for the misuse of which there was no remedy except impeachment of the President, which, the Speaker stated, was a futile action.

Why, after 167 years, after the exercise of that authority by every President, through the heads of the departments, should we write in a troublemaking provision which would be embarrassing to the administration and is so intended? There are all kinds of political hay, but H. R. 2767 is of the most dusty and poor quality.

Mr. MOSS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, again it is important to examine exactly what we are dealing with. Now, we cannot do, as the gentleman suggests—upset any of the inherent powers or the privileges of the Executive, if any. We are only amending here a statutory grant of authority. And, in what manner are we amending it? Merely to clarify the use of it. We say it may not be used as authority for the withholding. We mean, in the making of rules and regulations, that the ultimate effect for those rules and regulations must not be to withhold under this authority.

The gentleman proposes to add language which, in my judgment, cancels it out completely; we might as well not act, because he goes on and says, "nor shall this section be construed as requiring the giving of information or the making of records available."

So, on the one hand, we say that it should not be used for withholding, and

on the other hand we would be saying, "But, of course, you may." I think we should say one thing or the other very, very clearly and very definitely. It is my judgment that what we need to say is exactly what is said in the bill now before us.

I urge the defeat of the amendment.

Mr. VORYS. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I believe that the Hoffman amendment is the way to carry out what the gentleman from California [Mr. Moss] says this bill intends. If it is intended not to grant or withhold any new authority by this housekeeping statute, then the Hoffman amendment so provides.

As to the right of the people and the Congress to know, we often have instances before the Committee on Foreign Affairs where some member of the committee or the committee itself may feel that there is overclassification, too much secrecy on information that we seek. I have been exasperated and baffled as often as any Member in this twilight zone where security is claimed to be involved.

But it is claimed by the proponents of this bill that it does not purport or pretend to solve such real problems, which I believe can be solved only by negotiation or by impeachment, and negotiation, with constant pressure, is the proper way.

This bill, as written, either is nuisance legislation or it does not mean what it says.

For instance, the gentleman from California [Mr. Moss], says that "We merely want to provide that this section 161 cannot be used to withhold information." He did not say a word about the following words in the bill—"limiting the availability of records to the public." So that if you are only going to put in what he says, you are going to prohibit the withholding of information, but you are not going to prohibit any limitation on the availability of public records. But that is not the way the bill reads. By enacting this bill as proposed, you pose such questions as these, in providing unlimited public access to records. What about office files? What about desk drawers? What about going in day and night? What about going in during the noon hour? Can the head of a department make any regulations limiting public availability in any way or at any time if this bill passes in its present form?

In the original part of section 161 there is provided authority to make regulations for custody, use and preservation of records, papers and property. If that cannot be used to limit the availability of records to the public at any time, and regardless of circumstances, then the public would have the right to those files and desks any old time, day or night. How could you run an office under such conditions? And if you say that is not what the bill provides, you are merely saying that this bill does not mean what it says. The Hoffman amendment provides that this bill will then mean just what its proponents say it means; that is, take out the possibility that it will be used one way or another in this longstanding debate about how the public can best maintain the right to know about the public business.

I support the Hoffman amendment.

Mr. MEADER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this is an alternate method of trying to get at the same thing that my amendment proposes but doing it in a somewhat different way.

During the debate in committee, suggestions were made by several of the members of the committee. Unfortunately the gentleman from California, the author of the bill, was not present, and we could not arrive at any agreement. I, at that time, suggested arriving at the same result by saying that this section does not authorize or prohibit withholding information, and I was roundly condemned in the press for trying to scuttle the bill.

As a matter of fact, I was not trying to scuttle the bill, I was trying to do exactly what the author of the bill said it was supposed to do, which was to eliminate section 161 as a basis for refusing information to the public. It was not intended or at least the bill was not presented to the committee as giving any rights to the public. All the bill was supposed to do was to take away from public officials a crutch they had been using up to this time wrongfully, in the opinion of the committee. That is exactly what the Hoffman amendment would do and that is exactly what my amendment would do, that is, say that section 161 just has nothing to do with secrecy or withholding information from the public one way or the other. It would not vitiate the purpose of the bill as it has been presented to the committee and been presented to the House this afternoon, namely, that we just wanted to prevent a practice which has grown up of misusing and misinterpreting section 161 of the Revised Statutes.

I think the amendment ought to be adopted and we ought not to rely on debate, particularly when in the debate the author of the bill says this would prevent the accomplishment of the purpose of the bill. Then it must be that the purpose of the bill is to give the public the right to get information, notwithstanding other statutes that may be on the books.

I think there has been too much confusion here. We ought to write into the bill clear language. I think my language is a little bit better, but I am going to support the amendment offered by the gentleman from Michigan [Mr. HOFFMAN].

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, if any confusion has been brought about it has been brought about by the attempt to put amendments on this bill. The very language of the amendment now before the Committee in itself raises a great many questions dealing with the power and the prerogatives of the head of the department, which is the very thing the proponents of the amendment say they do not wish to affect in any way, because the amendment raises a presupposition by virtue of the language that the head of the department shall not have the right to issue information.

The only correct interpretation of the existing law is that the head of the department, by Congress, has been given the right to prescribe rules and regulations dealing with the custody, use, and preservation of the records. Then to combat the evidence that that statute has been used as authority to withhold the information you state by this bill that this section amended hereby shall not be used as authority to withhold information. But if you adopt the proviso in the amendments which are suggested, you raise the contrary presumption, that he shall not have the right to make the information and records available. This is why the amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. HOFFMAN].

The amendment was rejected.

Mr. MEADER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MEADER: Strike out "by" in line 4 and all that follows down through the end of line 7 and insert in lieu thereof the following: "by striking out the period at the end of the section and inserting in lieu thereof a colon and the following: '*Provided*, That no regulation shall be prescribed under this section authorizing or directing the withholding of information from the public or limiting the availability of records to the public.' "

Mr. MEADER. Mr. Chairman, I have discussed this amendment at some length in general debate and I do not propose again to go into detail on the advantages of using this language to accomplish the objective of the Moss bill.

I do, however, want to suggest one additional reason, if any should be necessary, why we should use the clearest language we can find. I think we should use clear language on its own merits. But, if this language could be interpreted the way I have suggested as affecting more than section 161, there would be an additional reason for a veto of this legislation.

I might say that the impression has been given here by reference to testimony of the Attorney General before the other body that the Attorney General is not opposed to this legislation. I might say for the information of the membership that the Attorney General has blown both hot and cold on this issue. It appeared that apparently he had not done his homework very well the first time he appeared before the Senate committee, and he got the proposed legislation mixed up with executive privilege, which he thinks is a great thing, and which I do not think exists. He said he did not care whether we passed this law or the companion Senate measure so long as it was made clear that it did not interfere with executive privilege.

Mr. HOFFMAN. Mr. Chairman, will the gentleman yield?

Mr. MEADER. I yield.

Mr. HOFFMAN. Was he not also counsel for the Truman Committee where I understand there was a little difference of opinion—but, did he not

also give you to understand that the Departments were standing on the constitutional rights given to the executive department and did he not the other day when they called him back before the Hennings committee just tell them that he was not coming and that he had already been there?

Mr. MEADER. Yes. And, after he got back to the department, some of the boys must have jogged him up a little bit, because then he sent a letter to the committee and the first sentence in the second paragraph is significant. He said "section 161 is a legislative expression and recognition of the executive privilege." Well, there really is a strained interpretation, if I ever heard of one.

Mr. HOFFMAN. Mr. Chairman, I make the point of order that the Committee is not in order.

The CHAIRMAN. The Committee will be in order.

Mr. HOFFMAN. Mr. Chairman, a parliamentary inquiry, if I may.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. HOFFMAN. Mr. Chairman, in the opinion of the Chair, could we get through more quickly if we had order?

The CHAIRMAN. The Chair agrees with the gentleman. The Committee will be in order.

Mr. MEADER. Mr. Chairman, the Attorney General went on then in his letter to quote the authorities that my friend, the gentleman from Michigan [Mr. HOFFMAN], has quoted freely in the debate, namely, the Speaker and the majority leader of the House, but he winds up his letter and says: "For the reasons stated, I am opposed to the enactment of S. 921 and H. R. 2148."

The administration, therefore, is on record as opposing this legislation, if the Attorney General speaks for the administration in this field. I have no other information on what may befall this legislation if it gets through both the House and the Senate, but I say let us not run the risk of having it vetoed by having fuzzy language in the bill and passing a bill that could be vetoed on that ground alone. Let us make our language as sharp and skillful as we can. Therefore, Mr. Chairman, I urge the adoption of my amendment.

The CHAIRMAN. For what purpose does the gentleman from California [Mr. Moss] rise?

Mr. MOSS. Mr. Chairman, I wonder if we might arrive at some agreement limiting debate on the pending amendment.

Mr. HOFFMAN. Mr. Chairman, I want 5 minutes or a part of 5 minutes anyway.

Mr. MOSS. How about dividing that time between the two of us?

Mr. HOFFMAN. Providing you use 1 minute; yes.

Mr. MOSS. If the gentleman will agree to an equal division of time, I think we can adequately cover the points that need to be covered.

Mr. HOFFMAN. Mr. Chairman, I have been holding the short end for 3 years now. Would the gentleman give me 4 minutes?

Mr. MOSS. Can we make it 8 minutes then?

Mr. HOFFMAN. Yes, all right.

Mr. MOSS. Mr. Chairman, I ask unanimous consent that debate on this amendment and all amendments thereto be limited to 8 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. HOFFMAN. Mr. Chairman, a parliamentary inquiry. That does not preclude motions to strike the enacting clause; does it?

The CHAIRMAN. The gentleman's request pertains only to limiting debate on the pending amendment and all amendments thereto.

Mr. GROSS. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GROSS. Mr. Chairman, does that mean the time will be divided between the two gentlemen equally?

The CHAIRMAN. The Chair will divide the time.

Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan for 4 minutes.

Mr. HOFFMAN. Mr. Chairman, I assumed that the opposition to the amendment would speak after the amendment was offered.

Mr. MOSS. Mr. Chairman, I am in agreement with the gentleman that the opposition to the bill would speak at this point.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. HOFFMAN].

(Mr. HOFFMAN asked and was granted permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, one reason why I wanted to expedite the hearings is so that the chairman of the Armed Services Committee, Mr. VINSON, who is waiting to speak and who is in a hurry might today give us the benefit of his wisdom and experience. But you have just seen the way the subcommittee handles things. It has been that way for almost 3 years on this committee. There are three members of the subcommittee and I am the only Republican. So I take what they give me.

The only purpose now is to support the amendment offered by the gentleman from Michigan [Mr. MEADER], which is similar to the one offered by me and rejected. It is quite true that in the committee hearings the gentleman from Florida [Mr. FASCELL] and the gentleman from California [Mr. Moss] both expressly stated with reference to those amendments that the purpose of H. R. 2767 was not to make available all information, or as their expert witness, Dr. Cross, is quoted on page 12 of the committee report:

It—

The bill—

does not require the giving out of all information.

Now, if that be true, if the bill they brought in, H. R. 2767, does not require the giving out of information as the three have expressly stated during the committee hearings, then why not write the provision into the bill, as the gentleman from Michigan [Mr. MEADER] proposes to do? Any reason at all? I cannot see any. If they meant what they said, as the gentleman from Michigan [Mr. MEADER] said, why compel those who are interested to go back to the debates? Why not put it "black on white" in the law, as the farmer used to say?

I yield back the remainder of my time, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. Moss].

Mr. MOSS. Mr. Chairman, most of the previous comments apply here. I realize the gentleman from Michigan [Mr. MEADER] is seriously concerned. He has made many contributions to the work of this subcommittee. This is an instance where we are in disagreement. In his judgment his language is desirable to clarify. It is my conviction that it would only confuse, because it would go directly to the authority to issue regulations, regardless of the other legal authority upon which the regulation might rely. I do not think it would in any way contribute to clarification. But in recognition of the very sincere feeling, the committee on page 12 of the report put in language which, in my judgment, was not necessary, but it was put in out of an abundance of caution to overcome the problem of the gentleman from Michigan [Mr. MEADER]:

The application of this amendment is limited to Revised Statutes 161 (5 U. S. C. 22) and should not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting the availability of information or records to the public.

I believe that is abundantly clear, and that the language contained in the bill as it is before us is sufficiently clear, without this amendment. I repeat, in my judgment it would confuse rather than clarify.

I ask for a vote on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. MEADER].

The amendment was rejected.

Mr. HYDE. Mr. Chairman, I offer an amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. HYDE of Maryland: On page 1, line 6, after the word "information" insert the words "and records"; and after the word "public" strike out the rest of line 6 and all of line 7 and insert in lieu thereof the words "in a manner not inconsistent with law."

The CHAIRMAN. The gentleman from Maryland [Mr. HYDE] is recognized.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, my amendment would make the present bill read this way, starting with the new language on line 5:

This section does not authorize withholding information and records from the public in a manner not inconsistent with law.

The purpose of the amendment is twofold: first, to clear up what many of us see as an ambiguity in the present language; and, second, as to the purpose to be accomplished by this bill, to express the intent of the committee exactly as the committee has expressed it.

The ambiguity is this: In the present language the last phrase reads, "or limiting the availability of records to the public."

Many of us fear that if the head of a department under the present language of the law attempts to adopt regulations that he will still be permitted to do, and those regulations in any way limit the availability of the records, then his regulations would be declared invalid.

The committee says that is not what it intends to do. The committee says it does not intend in any way to change the present law; it simply wants to make clear that records and information shall be available.

So instead of saying "limiting the availability of records," I suggest that we say "This section does not authorize the withholding of information and records."

That is the way I propose to clear up what many of us see as an ambiguity. Then to express the intent: the committee says this, namely, not to affect any other law on the books with respect to information which is restricted, add, after the word "public" the words "in a manner not inconsistent with law."

The committee says that is what it wants to do, but I have some fear in view of many court decisions, of leaving the question up in the air as to what Congress intends to do. We will pass a piece of legislation and say there is not going to be any question about this, this is exactly what we intend to do, and then we find that the courts do not agree with our understanding of intent. I am not questioning the right of the courts to their own interpretation, but if we intend not to do anything that will affect the present law with respect to security, with respect to FBI files, with respect to income tax records, and all those things, if we intend not to disturb those laws, let us say so and not leave it up to interpretation by the courts; because we have found, no matter how much we express our intent in committee, in reports, or on the floor of the House, or even where it is expressed in the law itself, that the court may or may not follow the report and the CONGRESSIONAL RECORD; so I submit, Mr. Chairman, that all my amendment does—and I want to reemphasize the fact that I am in complete sympathy with what the committee is attempting to do here—all my amendment does is to clear up an ambiguity and to express in unmistakable language the intent which the gentleman from California and the gentleman from Florida have said repeatedly on the floor this afternoon that they have, to put it in language which cannot be mistaken.

Mr. MEADER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield.

Mr. MEADER. It may be very clear to the gentleman, but he has so many double negatives in his amendment that I think he could cut out a couple and come up with the same result.

Mr. HYDE. I will read it again to the gentleman and I am sure when the gentleman hears it, it will be clear to him:

This language does not authorize withholding of information and records in any manner not inconsistent with law.

That seems to be simple language and also repeats some of the same language that is already in the section. The first sentence of the section authorizes the head of the department to prescribe regulations not inconsistent with law. My amendment simply says that it does not authorize him to withhold information and it also says that is not to be inconsistent with law.

Mr. MEADER. Would it not be the same if the gentleman took out the word "not," and "in-" in the phrase "not inconsistent" and say "in a manner consistent with law"?

Mr. HYDE. If the gentleman is trying to confuse my amendment he is doing a good job, at least with himself, it is obvious.

Mr. MOSS. Mr. Chairman, I ask unanimous consent that all debate on the pending amendment and all amendments thereto close in 6 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. CURTIS of Missouri. Mr. Chairman, I object.

Mr. MOSS. Mr. Chairman, I ask unanimous consent that all debate on the pending amendment and all amendments thereto close in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. JOHANSEN. Mr. Chairman, I object.

Mr. MOSS. Mr. Chairman, I move that all debate on the pending amendment and all amendments thereto close in 10 minutes.

The question was taken; and on a division (demanded by Mr. JOHANSEN) there were—ayes 57, noes 32.

Mr. JOHANSEN. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Moss and Mr. HOFFMAN.

The committee again divided and the tellers reported that there were—ayes 64, noes 48.

So the motion was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri [Mr. CURTIS].

Mr. CURTIS of Missouri. Mr. Chairman, I regret that the debate was cut off on this amendment giving all those wishing to speak 10 minutes' time. It regrettably shows illiberality on the part of the people who are trying to run this piece of legislation through. Incidentally, I happen to be in favor of the purpose of this bill. But I was very much interested in the fact that when I took the time to ask questions about it, in spite of the fact that the chairman of the committee, the gentleman from California [Mr. Moss] said that this thing had been carefully considered, when I asked the simple question what the added feature was of limiting the availability of records and whether that would not be covered by the language "withholding information," there was no answer from the side other than that they were afraid the word "information" would not include "records." And, that was the extent of it. If it was considered as carefully as the gentleman from California said it was, then obviously there is an ulterior motive or hidden motive in using the language "limiting the availability of records," because that is going to limit the housekeeping ability of the department in making available, I may say, the information that might be in the hands of the executive department. I think the amendment offered by the gentleman from Maryland is a good, constructive amendment and will help this legislation and accomplish the very purpose which the members of the committee say they are trying to accomplish. I hope the Members will vote for it.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Chairman, the proposed amendment by the gentleman from Maryland [Mr. HYDE] would make the bill read "this section does not authorize withholding of records." Now, if that does not impinge upon the very authority of the head of the department, who is given the authority under this act, I have not read the English language correctly with respect to that section. The amendment itself then does exactly what the proponent of the amendment is seeking to avoid, to impinge upon the right of the head of the department to pass or promulgate a reasonable regulation. The other portion of the proposed amendment says "in a manner not inconsistent with law." If you put that into the bill, it will be the second time in the same section that you say that this section shall not give a department head the right to promulgate regulations not inconsistent with law. How many times do you want to say it before you believe it? A dozen?

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. JOHANSEN].

Mr. JOHANSEN. Mr. Chairman, it seems to me we have here a very striking illustration of the need to assert and claim the right to know. I am speaking only for myself, but there is a great deal that I feel that I have a right and a duty to know with respect to this proposed legislation, and the successful effort of the proponents of this bill to cut off debate and the right to inquire and the right to know certainly raises a question as to just how broad and extensive the concern is over the right even of the Members of the Congress to know.

There are a number of things I would like to know which I have not been able

to get clear in my own mind. I would like to know precisely what is changed by the bill itself; what would be different as a result of its enactment?

In the second place, I would like to know whether this bill, if enacted, would compel the disclosure of information which now may be withheld and which the head of a department is now not compelled to disclose?

If the answer to that question is that there is nothing additional that would be compelled to be disclosed, then I would like to know precisely what is the purpose, what is the import and what is the effect of the enactment of this bill?

I would like to know, also, if this bill is enacted whether it does compel the disclosure of information not now required, and if so, within what limit that compulsion extends? And I would like to know in whom would be vested the authority and under what limitations that authority could be exercised to set the limits on what must be disciosed.

These, it sems to me, are pertinent questions and at an appropriate timei n this debate, in spite of the efforts to limit the right of Members of Congress to know about this bill itself, I intend to ask those questions under circumstances that will give the sponsors of this bill an opportunity to answer them.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. JOHANSEN] has expired.

The Chair recognizes the gentleman from Texas [Mr. ALGER].

Mr. ALGER. Mr. Chairman, I take this time again to ask further questions. I realize how complicated this subject is. Members of the committee have had an opportunity to study it and may have answers to questions that puzzle other Members. It seems odd, indeed, that our time is cut off, I might say to the gentleman from California, the Chairman of the subcommittee, on a bill that has to do with secrecy, when we are trying to get information.

I have two questions. First, inasmuch as the gentleman pointed out to us the language at the bottom of page 12, the language of the final paragraph, there seems to be a conflict as to its meaning. How we are going to limit this bill to apply only to section 161. That is my first question.

My second question is, could it be that we are giving Communists an opportunity to get into our committees, people who are dedicated to getting information that they should not get?

Mr. MOSS. In the first place, if it is something that is of interest to the Communists, and that information is classified, there is an abundance of law protecting that and the language of the bill does not affect that. The reason we know that we are dealing with this section is because the language of the amendment which relates to section 161 of the Revised Statutes says that this section does not authorize withholding. And to make that abundantly clear, in the report we say that the application of this amendment is limited to Revised Statutes 161, Section 5, U. S. C. 22 and should not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting of the availability of information or records to the public. We know it because it is very precisely and very carefully spelled out both in the language of the amendment and the language of the report.

Mr. ALGER. I simply must say to the gentleman that the forcefulness of the language in the report is not so clearly stated in the bill.

The CHAIRMAN. The time of the gentleman from Texas [Mr. ALGER] has expired. The Chair recognizes the gentleman from California [Mr. Moss] to close the debate.

Mr. MOSS. Mr. Chairman, I want to assure the members of the committee that there is no ulterior motive on my part in moving to close the debate. I rarely have been accused of that.

As to the matter of shutting off the debate, it was agreed by the majority and minority that we would seek a one-hour rule. When it was indicated by the ranking member of the subcommittee that he would desire an additional hour, I was perfectly willing to go along with him and get him the extra hour. I wanted this debate.

The bill has been debated at considerable length. I was prepared to respond to questions. I yielded back time during general debate that was not required for the debate. I think that the attempt to arrive at an agreement on time is neither unusual nor out of place.

I think that this amendment, again, would confuse rather than clarify.

I do not think it would do what its author intends it to do. The language of the bill, in my judgment, is still clear, is still adequate to do the job. I repeat, there are no ulterior motives. This record is very clear. We have laid out in detail the intent. It is only to prevent the misuse of this section for purposes of witholding information.

Mr. Chairman, I ask for a "no" vote on the amendment.

Mr. JOHANSEN. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. JOHANSEN moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

Mr. JOHANSEN. Mr. Chairman. I take this time in order to pursue the questions which I raised in the 2 minutes which I had. There is no intention of attributing any ulterior motives. I came back from my district this morning in order to be present for the debate because of my serious uncertainty as to the merits, the pros and cons, of this issue. I should like to repeat to the gentleman from California in all good faith and sincerity the questions which I raised. I should like to know precisely what is changed. In other words, in particular, what restrictions are placed upon the power of the department heads to issue regulations governing either the giving or the withholding of information? I am completely at a loss to know what is restrained and what is permitted under this bill.

Mr. MOSS. The amendment proposed by the committee restores the intent of the Congress that this be the statute upon which the head of a department shall rely for the formulation of rules and regulations governing the custody, use, and preservation of the records of the department. The reason the language is added that it is not authority for withholding is that in 3 years of careful study we have found far too many instances where executive departments have relied upon this statute as a clear authority to refuse information to the public or to the Congress itself.

Mr. JOHANSEN. May I interrupt the gentleman at this point, because I think in my own mind I now have the nub of the issue. If this bill were adopted, what discretionary authority does the department head have to withhold information where it is not specifically provided by law that he must withhold information? Is there surviving with the adoption of this bill a discretionary authority in the department head to withhold information?

Mr. MOSS. I want to be very careful on this language because the gentleman is asking me if there is an inherent authority, as has been claimed by every Executive from Washington to Eisenhower. I would say that if there is such authority, if there is that inherent power, it is not affected by this change in this statute. But I will not concede that the broad and naked purpose claimed does exist in that. I want that very clear in my response. If it exists, it is not affected.

Mr. JOHANSEN. But the gentleman does not concede that it exists?

Mr. MOSS. I would never concede that it does exist as broadly as is claimed.

Mr. JOHANSEN. Then let me phrase the question in this way: What protection does the department head have with respect to his sense of responsibility to his office when in his honest judgment it is imperative that information be withheld, and yet when there is no bestowal of the authority by specific statute so to withhold information?

Mr. MOSS. There are 78 other statutory grants of authority to withhold. There are provisions of the administrative procedures code which permit withholding for good cause found to be in the public interest and for a variety of reasons. We just do not want this statute to be cited. It is cited too often and it does not give the authority. It was not intended to give authority in this respect. They have abundant authority otherwise.

Mr. JOHANSEN. Of course, I will say to the gentleman the question whether this was intended to give that authority may be a subject of honest dispute and it may be a point at issue. But, my concern is why, if there have been specific abuses of this statute, we cannot in proper legislation address ourselves to those specific abuses or categories of abuses rather than seeming by this section to blanket out totally any authority under the statute.

Mr. MOSS. One of the main reasons for taking this as a first step is to get them back to relating their claims of authority to the appropriate statutes and

not to use this as a catchall for any claims that they may want to assert.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HENDERSON. Mr. Chairman, I rise in opposition to the motion.

Mr. Chairman, I take this time to address one question and possibly to amplify that question with another. The amendment that is proposed by this bill says this section does not authorize limiting the availability of records to the public. I would like to ask if there is any other section of law or any other statute which does authorize limiting the availability of records to the public so that if we pass this bill, the departments of Government may close their doors at their usual time. May I say that I ask this in all sincerity.

Mr. MOSS. I am not questioning the gentleman's sincerity, and I am confident that he is sincere, and I will try to respond in the same way. The answer to his question is—yes, there are are many statutes which clearly restrict the availability of records. I might point out that we are dealing here with the authority to issue regulations. If the only purpose of the regulation is to deny access, then it would be inconsistent. But there is the authority for the department head to make reasonable rules and regulations for the proper management, maintenance, and preservation of his records. We are only trying to see that this is not the crutch they grab to withhold information. But there are many, many statutory grants of authority, and I will get permission to include them in the RECORD when we are in the House. These many statutory grants of authority specifically confer the authority to withhold records. I know of no improper kind or type of information; I know of no information which could be damaging or prejudicial to any proper interest which would be made available by this.

Mr. HENDERSON. I thank the gentleman. I just want to raise this question because we are dealing here with the section of law which gives the heads of departments authority to prescribe regulations not inconsistent with law for the government of that department, and it would seem to me that the access of the records and the time in which they may be examined is a part, and a very proper part, of that regulation. In amending that very section by saying that this section does not authorize limiting the availability of records to the public, I want to be very, very sure that we are not doing something that we did not have in mind to do.

Mr. CURTIS of Missouri. Mr. Chairman, will the gentleman yield?

Mr. HENDERSON. I yield.

Mr. CURTIS of Missouri. I think the gentleman is hitting the right point, and the gentleman from California, I believe, misunderstood what the question was. It was not a question whether or not there are statutes that limit access to records like the Bureau of Internal Revenue, but where the records are supposed to be available whether there is anything in this proposed bill that would forbid a department to say, "You cannot come in after 5 o'clock." Or, set up regular housekeeping rules in regard to the inspection of these records. I submit the way you have worded it "limiting the availability" would actually interfere and tamper with the orderly housekeeping procedures of the departments. Am I not right? Is not that the point the gentleman makes?

Mr. HENDERSON. That is correct.

Mr. MOSS. This does not deny the right for the formulation of appropriate rules and regulations for the orderly use and access to records. Regulation for the purpose of withholding is not permitted under the language.

Mr. HENDERSON. I thank the gentleman.

Mr. JOHANSEN. Mr. Chairman, will the gentleman yield?

Mr. HENDERSON. I yield.

Mr. JOHANSEN. During my colloquy with the gentleman I understood him to say this would be the first step toward the elimination of abuses of security and so on. I am curious to know the import of that first step. What is the second or third step? What is implied?

Mr. MOSS. If the gentleman wishes me to respond I would be happy to do so. For one thing, there is an abundance of evidence in many hearings that the privilege to classify is being widely abused; is being used as a means of covering up information which has absolutely no bearing on the security of this Nation. We are going to go into that further, and perhaps try to overcome some of the problems inherent there. There are many specific statutes which we wish to examine, and at the proper time we will report to the House and suggest legislation.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the preferential motion offered by the gentleman from Michigan [Mr. JOHANSEN].

The motion was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland [Mr. HYDE].

The question was taken; and on a division (demanded by Mr. HYDE) there were—ayes 47, noes 79.

So the amendment was rejected.

Mr. GRIFFIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GRIFFIN: On page 1, line 7, strike out the period at the end of line 7 and insert a semicolon and add:

"*Provided*, That this section shall not be construed as repealing or amending any other statute which may authorize the withholding, restricting, or limiting the availability of information or records to the public."

Mr. GRIFFIN. Mr. Chairman, the Members recognize the substance of this amendment as the language read several times by the gentleman from California [Mr. Moss] which appears on page 12 of the report. This is the language which he said expresses the clear intent of the committee that this section shall not repeal or amend any other statutes which may authorize the limiting or restricting of information.

Ordinarily I would not offer such an amendment because I would not think such an amendment would be necessary, but in view of the fact that the amendment offered by the gentleman from Michigan [Mr. MEADER] was voted down and because of remarks of Members like the gentleman from Texas [Mr. ALGER] I believe it is now highly desirable that we write into the statute itself, and make it clear so no court can misunderstand, that we do not intend to repeal, amend, or in any way affect any other statute.

The only argument which the proponents of this bill could possibly offer in opposition would be that this amendment is unnecessary. Whether or not such an amendment is necessary is now a matter of debate; at any rate, it would do no harm, and it does not in any way change the intent or purpose of the statute that is before the committee.

I favor H. R. 2767 and intend to vote for it. However, I believe my clarifying amendment should be adopted.

Mr. JOHANSEN. Mr. Chairman, will the gentleman yield?

Mr. GRIFFIN. I yield.

Mr. JOHANSEN. The gentleman is certainly correct that apparently the committee in adopting the majority report felt it was necessary to give this assurance.

Mr. GRIFFIN. That is right Ordinarily I would think, that since the language is in the committee report, that should be sufficient; but in view of all the discussion and controversy I now believe it would be well to erase all doubt and write the language into the statute.

Mr. JOHANSEN. Inasmuch as it was felt necessary to offer this assurance in the committee report, does the gentleman see any plausible reason for opposing the spelling out of the assurance in an amendment?

Mr. GRIFFIN. I cannot imagine what it would be.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I do not know how many times you would wish to ascertain for yourself the effect of legislation by language in the legislation itself. If we are talking about draftsmanship, then let us look at the draftsmanship with respect to the act.

How cautious do you want to get? How many times do you want to repeat in the law that the language amending this particular section does not affect any other general statute?

Mr. Chairman, the section now reads:

That the rules and regulations which may be promulgated by a department head shall not be inconsistent with law.

How in the world can you say it in any other way? Why add another proviso which says the same thing? I have enough pride as an attorney, and I think other Members who are attorneys have, too, not to do that.

If we want to be supercautious about the matter for no other reason than to satisfy a request, the language in the report on page 12 is intended to show the intent. I daresay there is not a lawyer here who can produce a case in which the amendment to a section of law which

specifically provides that nothing can be done under that section inconsistent with law, which holds that such an amendment amends other general law. It just is not the law, and it is not good legislative procedure to keep adding provisos which have the same intent as the basic legislation. That is why the amendment should be defeated.

The record is abundantly clear; the language of the statute speaks for itself; the report speaks for itself; the debate on this issue is abundantly clear that we do not modify any other existing general statute, and there is absolutely no necessity for this House to write another proviso saying the same thing in the bill.

Mr. JOHANSEN. Mr. Chairman, I rise in support of the amendment simply to point out that the provision referred to by the gentleman from Florida in section 161 relates to the actions or promulgations of the head of a department; and if I understand the amendment offered by the gentleman from Michigan, it relates to the legislative act, to the act of Congress. I am not a lawyer, but in my best judgment those are two entirely different things; and as I understand the question as to how cautious we want to be, when it comes to safeguarding the secrets of the Nation that involve the security of this Nation, I know there is no Member of this House who wants to be other than completely certain even if it involves being repetitious.

Mr. GRIFFIN. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I yield.

Mr. GRIFFIN. I want to underscore what the gentleman from Michigan [Mr. JOHANSEN] said, that when the gentleman from Florida [Mr. FASCELL] referred to the phrase "not inconsistent with law," I say we are interested in what this statute is going to mean.

Mr. JOHANSEN. And without it there might be misunderstanding.

Mr. GRIFFIN. That is right; it does not necessarily cover the other point at all.

Mr. MOSS. Mr. Chairman, I merely want to ask that the amendment be defeated. I think it is completely unnecessary.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. GRIFFIN].

The question was taken; and on a division (demanded by Mr. GRIFFIN) there were ayes 63, noes 87.

So the amendment was rejected.

Mr. HOFFMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOFFMAN: On page 1, line 7, after the word "public" strike out the period, insert a comma, and add "nor does it limit any constitutional privilege."

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, this amendment came up from the Department of Justice. Perhaps it would not have been offered, no matter the source from which it came, had it not been for the statement of the gentleman from California [Mr. Moss] when he expressed the opinion, if my understanding is correct, just a few moments ago that he had some doubt about the constitutional authority of the executive departments to control their own records. Sure we cannot limit the authority given other departments by the Constitution, but we act and talk on the thought we could.

Mr. MOSS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan [Mr. HOFFMAN].

Mr. Chairman, I do not think the amendment is at all germane. There is no use going into a lot of discussion. We have had this question adequately debated. It would be, in my judgment, unnecessary because we have no right here to modify constitutional authority.

Mr. MEADER. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Michigan.

Mr. MEADER. May I say I do not believe we could amend the Constitution no matter what we do here, but beyond that I am afraid that this language might be interpreted to recognize what the Attorney General has asserted on the executive privilege of the executive branch of the Government to withhold information from the Congress. I would hate to see that imaginary executive privilege being recognized in any way by any enactment by the Congress, because I do not think there is any such authority.

Mr. MOSS. The gentleman has stated my convictions exactly.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. HOFFMAN].

The amendment was rejected.

Mr. HOFFMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOFFMAN: On page 1, line 5, after the colon, following the word "sentence," strike out all subsequent thereto and in lieu thereof insert the following: "This section does not authorize withholding information from the public or limiting the availability of records to the public, nor shall this section be construed as requiring the giving of information or the making of records available where such action would endanger the national security, or unreasonably impair the efficiency of Government operations, or result in unfair advantage to any person, or disclose the source of information given an agency or official of the United States in confidence."

(Mr. HOFFMAN asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, the previous amendment which was just voted down with such an overwhelming majority would not have been offered, perhaps, had it not been for the prior action of the committee from which it seems that the committee thought it did have authority to amend or repeal portions of the Constitution.

This amendment is a sincere, studied effort to give the people and the Congress the legislation which they should have. It merely requires the departments to come up with a set of rules that would be reasonable and just.

The amendment was presented to the committee but was given no consideration whatsoever, I may say presumably, because it did not meet with the approval of the press or of the reporters on the staff who run the committee. So, I will not argue further about it.

I just ask you if you are interested in this broad subject of the people's right to know and what the Congress can do about it, that you go back to May 12 and 13, 1948, and read what your Speaker and the then minority leader said about the power of Congress. Now, if you have time during the rest of the week, just look that over, or read the additional views as printed in the report. It would be helpful.

Mr. MOSS. Mr. Chairman, I rise in opposition to the amendment. In substance it is the same as an amendment which was defeated earlier, but it just goes a little further in setting down additional categories of information. But the import is the same. I think the Committee has heard enough. I urge that the amendment be defeated.

Mr. McCORMACK. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Massachusetts.

Mr. McCORMACK. In view of the reference to the majority leader by the gentleman from Michigan, I certainly want to make the brief but simple and truthful observation that the bill today is not the bill that was debated back 3 or so years ago; 2 entirely different bills.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. HOFFMAN].

The amendment was rejected.

Mr. DAWSON of Utah. Mr. Chairman, while I am not convinced that this legislation will in any great sense do away with the opaque screen of secrecy with which Government officials surround their mistakes, it is a step in the right direction. I am astounded by the fact that executive agencies have been using this ancient and inoffensive housekeeping act upon which to rest their authority for withholding information from the public. Certainly that was not the original intent of Congress, and by overwhelmingly approving this legislation we can serve notice on the bureaus and agencies downtown and scattered throughout the Nation and world that it must not be so used.

I want to commend the Government Information Subcommittee and the Members of the House who have spoken today against the attempts by the executive branches to keep from the public knowledge, the public's business. They are dead right and I want to associate myself with their comments.

There is one fault with this bill. It is not inclusive enough. It leaves Congress out. We should be consistent particularly in a matter as fundamental as the people's right to know. We are not. Early in this Congress I introduced a bill to require congressional committees to budget and account for their expenditures of counterpart funds. The number of my bill is H. R. 4764. I invite other members to sponsor similar legislation and I hope that every Member

who has spoken so forcefully for the legislation before us today will give my bill or its counterpart the same enthusiastic support.

We today are criticizing executive agencies for withholding information about their operations from the public. Yet we condone a situation in Congress that not only prevents the people from knowing how a portion of their money is being spent but as a matter of fact keeps these expenditures from the eyes of Congress itself.

Mr. Chairman, this is a deplorable situation and is bringing disrepute on this body. I hope we can correct this defect in our zeal to see that the public obtains the information it needs to promote and perpetuate our type of government.

Mr. RAY. Mr. Chairman, H. R. 2767 strikes me as bad legislation. It would amend an old statute which entrusted departmental files to the heads of those departments subject to regulations prescribed by those officials. H. R. 2767 would add one sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

That language requires that some one decide the question of fact as to whether or not there has been a withholding of information or action limiting the availability of records to the public. Who is to decide that question?

Clearly that decision cannot be entrusted to individuals who want information. If the decision is to rest with the head of the department, the proposed amendment neither adds to nor changes existing practices. The head of the department now makes those decisions.

In my judgment we should not attempt to change and limit existing departmental authority unless we can prescribe definitely what Congress intends. The proposed amendment does not do that and, therefore, I must vote against H. R. 2767 if it comes to a vote in its present form.

I think the bill should be referred back to the committee for further study.

Mr. REUSS. Mr. Chairman, in passing H. R. 2767 today the House of Representatives can strike an important blow for freedom of information in the United States Government.

Some persons in the executive branch have converted an ancient and simple record-keeping statute into a general permission for themselves to withhold information from the press and the public simply for the sake of withholding information.

This bill eliminates one refuge of the secrecy-minded bureaucrat, and is therefore a major step in the right direction. The wonder is that this matter was not cleared up by the Congress long ago.

Enactment of H. R. 2767 into law will not end secrecy in Government. Persons in some departments and agencies will continue to withhold information without justification from the public, the press and even Members of Congress. But we will keep after them, too, and eventually stop them.

The argument that a lessening of secrecy is an invitation to the press to go hog wild rummaging through Government papers is silly. The American press is a responsible press. I should like to quote one paragraph from a letter I recently received from William Huffman, Jr., publisher of the Wisconsin Rapids Daily Tribune in my State, which concisely sets forth the attitude of the press:

Please bear in mind that we are not talking about the freedom of the press to capriciously print or say anything in an attempt to obtain readers or listeners. Rather, we regard this matter of reporting news of governmental operations, at all levels, as an important function in the people's right to know.

I want to compliment the Government Information Subcommittee and especially the chairman, the gentleman from California [Mr. Moss] for fighting vigorously and constantly to expand and strengthen freedom of information. This fight I know will be continued, and will have my full support.

I include in the RECORD a deserved tribute to JOHN MOSS and his subcommittee in the form of an editorial appearing in the Wisconsin Rapids (Wis.) Daily Tribune on March 3, 1958:

MOSS GROUP WORKS TO LET US KNOW WHAT'S GOING ON

Good friends of the American people are Representative JOHN MOSS, Democrat, of California, and his House Government Information Subcommittee.

Moss, chairman of the subcommittee, has been outstanding in his service to the entire Nation by his hard fight to provide our citizens with information on the Federal Government—information they need and have every right to.

Moss and his subcommittee know United States citizens must receive a free flow of information. This is a must if people are to express their views on how their government is to operate.

But there are hordes of governmental servants in Washington, D. C., who don't see it this way. They hide information or otherwise refuse to reveal it, even when military secrecy is not involved.

Slapping secret labels right and left on information, knowledge of which does not harm national defense, is bad enough. But what is particularly devilish is the way that civilian agencies sit on information that is not even stamped secret.

Post Office Department, Treasury Department, Agriculture Department, Civil Service Commission, General Services Administration, Veterans Administration, as well as Army, Navy and Air Force have all taken advantage of the public's trust in them.

Moss and his subcommittee are not talking through their hats; nor are we. We can give you a list of examples as long as your arm. And the list isn't secret.

To straighten out at least the coverup of nonsecret information, Moss and his House group approved bill H. R. 2767. The bill is now before the full House Government Operations Committee, of which Representative HENRY REUSS, Democrat, of Wisconsin, is a member.

The corrective action the bill would take is so simple it's startling. The background on it is short and interesting:

A Federal housekeeping law was enacted way back in 1789 in the administration of President Washington. This statute authorized department heads of the new government to keep records and set up filing systems.

In the 168 years since, however, the meaning has been twisted by many governmental servants into a claim they can keep the filing cabinets locked and the records hidden.

The pertinent language of the law as it now stands is:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for * * * the custody, use and preservation of the records, papers, and property appertaining to (the department)."

The bill would add only one sentence to the law:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

Benefits resulting from passage of the bill would be:

1. Governmental agencies and the public will be notified of Congress' interest in the people's right to know what goes on in Federal Government.

2. Congress will show that it intends to establish the policies determining types of information to be withheld.

3. Department heads and others in Government without authority will not be able to withhold information on their actions and records.

The CHAIRMAN. Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore having assumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, pursuant to House Resolution 514, he reported the bill back to the House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

Mr. HOFFMAN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. HOFFMAN. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. HOFFMAN moves that the bill be recommitted to the Committee on Government Operations with instructions that the committee hold further hearings and as soon as may be convenient report back to the House a bill requesting the executive departments to establish reasonable regulations and procedures which will make available not only to the press, to the Members of Congress, and congressional committees, but to interested individuals, any and all records and information in the possession of or under the control of the executive departments, other than records and information pertaining to state secrets, diplomatic communications, confidential military matters the disclosure of which might give aid to actual or potential enemies, or of such other records as may be determined by due process of law to be of such nature that inspection thereof would be contrary to the public interest.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion was rejected.

The SPEAKER pro tempore. The question is on passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. MOSS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed, H.R. 2767.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

TENTH ANNIVERSARY OF OEEC

(Mr. BOGGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOGGS. Mr. Speaker, today, April 16, 1958, is the 10th anniversary of the birth of a European organization which has made an invaluable contribution to the strength of the Atlantic community. This is the Organization for European Economic Cooperation. The OEEC includes the governments of 17 countries of western and Mediterranean Europe. The United States and Canada are participating in its work as associate members.

Ten years ago Europe was facing one of the worst economic crises it had ever known. This crisis was the result of 6 years af war. Between 1940 and 1945 most of the European countries had been occupied by the Nazi troops, some by the Russians as well, and as a result of bombardments and land attacks a large part of the basic industrial equipment of Europe had suffered very heavy losses. In the same way farms had been devastated and the transport systems were largely destroyed.

Then on the 5th of June 1947, at Harvard University, Secretary of State, George C. Marshall made the suggestion that the United States should grant to Europe substantial amounts of economic aid, provided the various countries concerned would combine their efforts in a joint European recovery program.

This was particularly gratifying to me because for sometime prior to this date Senator FULBRIGHT and I had been pointing to the need for a concerted program insofar as Europe was concerned. We had introduced a resolution to this effect in the 80th Congress and had made many public expression to the effect that piecemeal aid would never stop communism or restore Europe. So the Marshall speech was most gratifying to me.

As a result of Secretary Marshall's offer, it was agreed to establish the Organization for European Economic Cooperation, whose first task would be to work out a European recovery plan. The OEEC convention was signed in Paris on April 16, 1948, exactly 10 years ago.

The economic progress which the OEEC countries have achieved during the last 10 years is the best evidence of their economic vitality, combined with their desire to achieve economic cooperation and integration. In those 10 years, industrial production in the OEEC area increased by 90 percent; agricultural output by 55 percent; and the internal trade of the OEEC area expanded by more than 250 percent. It is significant to note that at the same time trade with countries outside the area expanded by about 80 percent.

I believe that the United States can take pride in having contributed much of the initial stimulus through the Marshall plan to the continuing drive toward European economic integration. In this connection you will recall that a common-market treaty between six of the OEEC member countries has now come into force, and ministerial negotiations are now going on in Paris with a view to the possible establishment of a free-trade area that would extend the advantages of closer cooperation to all 17 of the OEEC countries.

A summary of the OEEC's achievements during its first 10 years has recently been released by the organization. I ask unanimous consent that this summary be printed in the body of the RECORD at this point in my remarks.

The summary follows:

TENTH ANNIVERSARY OF OEEC—OUTSTANDING EVENTS IN 10 YEARS OF EUROPEAN ECONOMIC COOPERATION

1948

April 16: Signature of the Convention for European Economic Cooperation by Ministers of 16 European countries and allied representatives for Germany.

This signature was the climax of 10 months intensive work following the offer of United States help to Europe made by General Marshall at Harvard on June 5, 1947. This work had begun in the Paris Conference in July 1947 and had continued in the Committee of European Economic Cooperation. This committee decided upon the creation of OEEC.

In the general obligations included in the convention, "recognizing that their economic systems are interrelated and that the prosperity of each of them depends on the prosperity of all," the contracting parties undertake to work in close cooperation in their economic relations with one another; as an immediate task, to undertake the elaboration and execution of a joint recovery program; to proomte the development of production; to develop, in mutual cooperation, the maximum possible exchange of goods and services; to this end to institute a multilateral system of trade by removing restrictions, together with a multilateral payments systems; to strengthen their economic links, and for this purpose to continue the studies in progress on customs unions or analagous arrangements such as free-trade areas; to achieve and maintain currency stability; to make the fullest and most effective use of their manpower.

July 16: The council approves basic principles for the establishment of the 1948–49 program and agrees on the principle of the division of American aid by OEEC.

The United States Government accepted the principle that it should be the Europeans themselves who should be responsible for the division of the American aid. Countries' requirements were examined within OEEC, and an agreed program and recommendations for the division of aid were sent to the United States Government, which approved them in their entirety. During the Marshall plan period (1948–52), $13,100 million of American aid were shared out among member countries.

1949

July 2: The council requests member countries to take the necessary steps for the progressive elimination of quantitative import restrictions between one another in order to achieve as complete a liberalization of European trade as possible.

Until, with the beginning of the free-trade-area negotiations in 1957, the question of tariffs began to preoccupy the OEEC, the removal of quota restrictions on imports was the only field in which the organization had worked to free trade.

Taking the year 1948 as the year of reference, member countries were required to free goods imported on private account to a progressively higher percentage of their total of such imports: 50 percent on December 15, 1949; 60 percent on September 19, 1950; 75 percent on February 1, 1951. At the beginning of 1955 the statutory percentage was raised to 90 percent, and though in certain cases member countries have encountered difficulties which have prevented this being fully achieved, the overall percentage for the whole OEEC area now stands at 82 percent.

October 31: Delegates of the Federal Republic of Germany take their place on the council for the first time.

Apart from the fact that Trieste no longer has separate representation, the membership of the organization has remained unchanged since this date. Member countries are: Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxemburg, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey, United Kingdom.

Certain other countries have special status. The United States and Canada are associate members, represented on the council and all other bodies of the organization, but without voting power. Spain also participates in the work of the organization and is a full member where food and agriculture are concerned. Yugoslavia sends observers to meetings and takes full part in the work of the European Productivity Agency.

1950

September 19: Member countries sign the agreement establishing the European Payments Union.

The EPU system took the place of previous annual payments agreements, and has since been renewed annually. It is designed as a central clearance and credit system for the settlement of all payments transactions between the member countries and their associated monetary areas, such as the sterling area. The bank for international settlements, at Basle, acts as agent for the OEEC in the union, expressing member countries' credits and deficits with each other in one net credit or deficit with the union each month. Net balances with the EPU are settled partly in gold and partly in credit, on a scale decided upon by the council of OEEC. Since August 1955 this scale has been 75 percent gold, 25 percent credit.

December 2: The council examines the report of the economic committee on the shortageof raw materials.

The outbreak of the war in Korea had an immediate effect on Europe's economy, causing shortages in certain raw materials—particularly nonferrous metals—and consequently steep rises in prices. The organization subsequently participated in the central group of the International Materials Conference; adopted measures designed to increase the production of raw materials; and agreed upon restrictions on the end-uses of nonferrous metals for nonessential purposes. These restrictions remained in force for 2 years, by which time the position had so far improved as to enable their cancellation.

1951

July 20: The council adopts the Code of Liberalization of Trade and Invisible Transactions.

This code, agreed by all member countries, lays down rules of conduct for these countries in the field of trade. It also contains certain escape clauses enabling any country in balance of payments difficulties to reduce or even temporarily to suspend

its liberalization measures after detailed examination by, and the previous consent of its OEEC partners. Where a country is obliged to have resort to these clauses, the other member countries continue to maintain their liberalization measures vis-a-vis the country in difficulties.

Invisible trade, which applies to current transactions and transfers other than those directly linked with the selling of goods (e. g., freights, insurance, investments and tourism) account for 25 percent of the total current payments between member countries. The list of invisible transactions forms part of the code of liberalization and contains some 50 items which member countries are under an obligation to free from restrictions.

December 13: A European network of technical information centers is set up on the initiative of the OEEC Committee for Scientific and Technical Matters.

This was one of the first steps which led to the creation of the European Productivity Agency, within OEEC, on May 1, 1953. The EPA, working through national productivity centers, acts as a focus for cooperative action in this field. Its work is characterized by a marked emphasis on problems of education and training and on cooperative study of topics affecting the entire European economy—automation, human sciences, and the ever-increasing need for technical and scientific personnel. Its programs are directed both toward management and the trade unions.

In June 1956 the existence of the Agency was prolonged until June 1960.

1952

January 11: The Council sets up a ministerial coal production group.

In Europe's rapidly expanding economy, there has been a constant struggle to provide sufficient energy supplies. The coal, oil, gas, and energy committees have worked to ensure the most efficient use of available supplies, and in particular to avoid excessive dollar expenditure. In 1956, after consideration of a special report entitled "Europe's Growing Needs of Energy—How Can They Be Met?", the Council decided to set up an Energy Advisory Commission to study energy problems of general significance and to forecast energy requirements and supplies.

March 27: The Council reaffirms its intention to pursue, by a policy of mutual assistance and economic cooperation, its endeavors to attain the objectives set out in the Convention.

This was a moment of deep significance in the life of the organization. The Marshall plan period was at an end and henceforth the 17-member countries would have to stand on their own feet without outside financial assistance. The progress made in the previous 4 years had taught member governments the value of economic cooperation and from now on the organization became a permanent forum for the planning and execution of this cooperation.

March 29: The Council decides on regular examination of the economic and financial situation of member countries.

To achieve a healthy expansion of the European economies, at the same time maintaining internal financial stability and the balance of payments, it is of special importance to coordinate the policies of member countries in the economic, financial, and fiscal fields.

To this end, regular examinations take place of the situations of member countries and of their intentions as regards economic policy in the competent committees of the organization and by Council recommendations.

November 27: A conference on the dollar export drive is held at the Chateau de la Muette.

This conference, which was attended by representatives of the organizations in member countries responsible for directing and coordinating the dollar export drive, is a reflection of the very great importance attached by OEEC to dollar earnings. A measure of the organization's success in this direction is provided by the fact that the combined dollar exports of member countries to the United States rose from $1,455,000,000 in 1949 to $4,657,000,000 in 1956.

1953

March 18: A confcrence on European inland transport meets under the auspices of the OEEC.

Up to this time, problems of inland transport had been dealt with in the OEEC by its Inland Transport Committee. As a result of this preliminary conference it was decided to set up a permanent European Conference of Ministers of Transport to insure the maximum use and most rational development of inland transport by rail, road, and water. Meetings of this Conference are held from time to time at the Chateau de la Muette in close collaboration with the services of the organization.

April 10: An OEEC Mission starts talks in Washington with the American Administration.

This Mission, which went to the United States at the invitation of the United States Government, studied with its hosts the economic situation in Europe, recommendations contained in its 1952 annual report, and methods of achieving a wider system of trade and payments. Financial aid from America had come to an end, but the continuing interest of the United States in helping to build and maintain a strong European economy is demonstrated by these talks and by the close participation of United States representatives in the day-to-day work of the organization.

1954

May 5: The Council sets up a ministerial examination group for the study of problems which would arise if a number of member countries recstablish convertibility.

A return to full convertibility of European currencies has not yet proved possible. But it was necessary, in the event that one of the stronger currencies should go convertible, to make arrangements to bring EPU to an end without losing the financial cooperation which it had brought about. At a later date the Council approved the text of a European monetary agreement to come into force should this contingency arise, and this agreement stands ready to be put into operation at any time.

November 14: The Council instructs a special group to lend its good offices in the settlement of the Anglo-Icelandic fisheries dispute.

A small but significant pointer to the value of the relations established between the members of the OEEC negotiations between the two countries concerned having failed, the good offices of the organization succeeded in settling the dispute 2 years later.

1955

January 13: The Council established a Ministerial Committee for Agriculture and Food.

The OEEC thus took over the work of what had formerly been known as the Green Pool, and Spain, which had been a member of the latter body, became a full member of the organization in matters concerning agriculture and food.

The ministerial committee, which is assisted by a Committee of Deputies, is responsible for confronting the agricultural policies of member countries and for recommending means of improving trade in this field.

June 10: The Council recommends member countries to lend their help in the Italian program for the development of southern Italy and the abolition of unemployment.

Since this date, the organization has given its support to Italy's efforts, and, through the European Productivity Agency, to those of Greece and Turkey in the economic development of their countries.

1956

February 28: The Council adopts a resolution concerning cooperation among member and associated countries in the development of peaceful uses of nuclear energy.

This resolution led to the setting up, on February 1, 1958, of the European Nuclear Energy Agency within OEEC. The functions of this Agency are to promote the establishment of joint undertakings between member countries, discuss their research and production program for nuclear energy, study their requirements for raw materials and capital equipment, promote the liberalization of trade in these products, develop facilities for the training of specialists and help to finalize and harmonize national legislation, in particular as regards the safeguarding of public health, prevention of accidents, third-party liability and atomic risk insurance.

On the same date, 12 member countries signed an international agreement setting up a first joint undertaking, the European Company for the Chemical Processing of Irradiated Fuels (Eurochemic).

June 17: The Council instructs a special working party to study the possible forms and methods of association, on a multilateral basis, between the custom union envisaged by the Brussels Inter-Governmental Committee (i. e., the European Economic Community) and the OEEC member countries not taking part therein.

Thus began what has since been, and remains, the organization's main preoccupation. On October 17, 1957, after a preliminary period of study of the possibilities of setting up a European free trade area, the real negotiations began. The council then declared its determination to secure the establishment of a European free trade area which would comprise all member countries; to reach agreement at the same time on methods of further cooperation between all member countries in agricultural matters; in the establishment of the European free trade area, to take full account of the interests of member countries in process of economic development.

At the same time the Council decided to convene forthwith an Intergovernmental Committee at ministerial level under the auspices of the Organization and at its headquarters. All member countries are represented on this committee, together with the European Economic Community (the common market countries) and the European Coal and Steel Community. Negotiations have since been carried on at a series of meetings of this committee, presided over by Mr. Reginald Maulding, United Kingdom paymaster-general.

November 30: The Council takes action with regard to Europe's oil supplies.

In view of the possibility of an oil crisis developing, the Organization had undertaken preparatory work which enabled it to take very rapid action in the Suez emergency to minimize its effects on the European economy. The Organization set up an entirely new form of international cooperation in creating a special oil-industry group (OPEG) associating the main European international supplying companies with the work of the Organization's Oil Committee. This Committee, with the help of the industrial representatives, quickly organized a fair allocation among member countries, according to their needs, of available oil supplies.

These unusual arrangements, a moderately warm winter, and other favorable factors resulted in the fact that the Suez happenings did not exercise very serious repercussions on the general economy of Europe.

85TH CONGRESS
2D SESSION

H. R. 2767

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1958

Read twice and referred to the Committee on the Judiciary

AN ACT

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Passed the House of Representatives April 16, 1958.

Attest: RALPH R. ROBERTS,

Clerk.

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85TH CONGRESS
2D SESSION

H. R. 2767

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Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued May 6, 1958
For actions of May 5, 1958
85th-2d, No. 70

CONTENTS

HIGHLIGHTS: See page 5.

HOUSE

1. COTTON. The Agriculture Committee reported without amendment H. R. 11399, to fix the price support for extra long staple cotton at a level between 60 percent of parity and not in excess of the parity price for the 1956 crop (H. Rept. 1691). p. 7234

2. LIVESTOCK DISEASES. The Agriculture Committee ordered reported H.R. 12126, to "provide further protection against the introduction and dissemination of livestock diseases." p. D384

3. WATERSHEDS. The "Daily Digest" states that the Agriculture Committee "approved watershed projects in the following States: Georgia, Indiana, Mississippi, North Carolina, and Oregon." p. D384

4. WHEAT IMPORTS. A subcommittee of the Agriculture Committee ordered reported with technical amendment H. R. 11581, to increase the duty on imported wheat seed treated with poisonous substances which is unfit for human consumption. p. D384

5. SOIL BANK. Passed without amendment S. 2937, to compensate producers for hardships suffered under the 1956 soil bank program as a result of incorrect information furnished by county committees. A similar bill, H. R. 10114, was laid on the table. This bill will now be sent to the President. p. 7179

6. LIVESTOCK LOANS. Passed without amendment H. R. 11424, to extend for 2 years (through 7-14-61) the authority of the Secretary to extend or make supplementary advances in connection with special livestock loans. p. 7180

7. WOOL IMPORTS. Agreed to the Senate amendments to H. R. 2151, to suspend for two years the import duties on certain coarse wools imported under bond for use in the manufacture of rugs and carpets. This bill will now be sent to the President. p. 7183

8. LAND WITHDRAWALS. Received from the Director, Alaska Department of Fish and Game, a letter "relative to a policy statement on land withdrawals by the Alaska Fish and Game Commission, Territory of Alaska." p. 7234

9. FOOD ADDITIVES. Received a Columbus, O., citizens petition urging the enactment of legislation to regulate the use of chemical additives in food. p. 7245

10. FOREIGN TRADE. Rep. Dorn stated that the American Legion opposes extension of the reciprocal trade program, and inserted a resolution adopted by the national executive committee of the Legion urging a foreign-trade policy "that will prevent the injury to or liquidation of industries essential to the defense and the economic welfare of this country." p. 7195

11. FLOOD CONTROL. Rep. Mack and others spoke in favor of the enactment of a rivers and harbors and flood control bill with the deletion of projects to which the President is opposed. pp. 7224-9

SENATE

12. FORESTRY. The Interior and Insular Affairs Committee reported with amendments S. 3051, to provide alternatives of either private or Federal acquisition of the part of the Klamath Indian forest lands which must be sold under the termination act (S. Rept. 1518). p. 7128.

Sen. Neuberger inserted 3 editorials favoring Federal acquisition of the Klamath forest lands. pp. 7147-8

Sen. Neuberger inserted a letter from the Trustees for Conservation stating that the wilderness preservation bills would carry out the multiple use program. pp. 7148-9

13. APPROPRIATION. Both Houses received from this Department a report prior to restoration of balances to the appropriation, "Salaries and Expenses Farmers' Home Administration," as of Mar. 31, 1958. pp. 7128, 7234.

14. INFORMATION. The Constitutional Rights Subcommittee ordered reported to the Judiciary Committee without amendment S. 921, to prevent use of 5 U.S.C. 22 to withhold information. p. D382

15. PRICE SUPPORTS; ACREAGE ALLOTMENTS. Sen. Neuberger inserted a letter from the National Ass'n of Wheat Growers and a telegram from 3 Democratic county chairmen, urging him to vote to over-ride the President's veto of the farm freeze measure. pp. 7149-50

16. STATEHOOD. Sen. Church urged statehood for Alaska, with comment and discussion by Sens. Neuberger, Knowland, Thye, Case (S.D.), Proxmire, Carroll, Anderson, and Yarborough. pp. 7162-75

17. TRANSPORTATION. Sen. Langer urged action by Congress to aid the railroads. pp. 7134-5

18. COMMITTEES. Sen. B. Everett Jordan, the new Senator from N. C., was assigned to the Post Office and Civil Service Committee and the Public Works Committee. pp. 7127-8

16. COTTON. Passed without amendment H. R. 6765, to repeal the prohibition against cotton acreage reports based on farmers' planting intentions. This bill will now be sent to the President. pp. 8216, 1233

17. RESEARCH; WILDLIFE. At the request of Sen. Hruska, passed over S. 2447, to authorize studies of the effects of insecticides upon fish and wildlife. p. 8212

18. SALINE WATER. At the request of Sen. Talmadge passed over S. J. Res. 135, to authorize the Interior Department to construct and operate a salt-water conversion demonstration plant. p. 8212

19. FARM PROGRAM. The Agriculture and Forestry Committee ordered reported the following bills:
An original bill authorizing transfer of cotton acreage allotments from lands which cannot be planted to other lands in 1958;
S. 1436, with amendment, to amend various provisions of law regarding ASC committees;
H. R. 376, to prohibit trading in onion futures on commodity exchanges;
H. R. 7953, to facilitate and simplify the work of the Forest Service;
H. R. 5497, to authorize Federal assistance for certain fish and wildlife development projects under the Watershed Protection and Flood Prevention Act; and
H. R. 11399, to authorize the Secretary to set the level of price support for extra-long-staple cotton at between 60 to 75 percent of parity. p. D344

20. IMPORTS. The Finance Committee reported with amendments H. R. 6006, to provide for greater certainty, speed, and efficiency in the enforcement of the Anti-dumping Act (S. Rept. 1619). p. 8170

21. INFORMATION. The Judiciary Committee reported without amendment S. 921, to prevent the use of 5 U. S. C. 22 to withhold information. p. 8170

22. RECLAMATION. Passed as reported S. 2215, to authorize the Interior Department to construct, operate, and maintain the Spokane Valley Project. p. 8200

23. FLOOD CONTROL. Sen. Kuchel urged the Senate to act on the flood control authorization bill vetoed by the President, and inserted various communications on the need for such projects in Calif. pp. 8242-6

24. POSTAL RATES AND PAY. Agreed to and sent to the House the conference report on H. R. 5836, the postal rate and pay increase bill, by a vote of 88 to 0. pp. 8227-33

25. STATEHOOD. Sen. Church urged Alaskan statehood, and inserted a letter he wrote to the President to urge his support for the bill. p. 8251

26. FOREIGN AID. The Foreign Relations Committee began consideration of the proposed Mutual Security Act of 1928, and adopted a policy statement that it was the sense of Congress that India be given support in its economic development program. pp. D445-6

27. FOREIGN TRADE. Sen. Morse inserted a summary of Ore. opinion ballots on certain public questions, including support for world trade policies in line with Administration-backed proposals. pp. 8191-4

28. EXPORT CONTROL. Received from the Commerce Department a report on export control for the first quarter of 1958. p. 8169

29. ARBOR DAY. Sen. Javits inserted a resolution of the Greene County, N. Y., Board of Supervisors, urging establishment of a National Arbor Day. p. 8169

ITEMS IN APPENDIX

30. RESEARCH. Sen. Knowland inserted his address before the American Feed Growers Ass'n discussing "pertinent" farm facts and suggesting certain action toward an improved farm program. pp. A4649-51

31. PRICES. Sen. Javits inserted excerpts from Ewan Clague's, Dept. of Labor, speech, "The Consumer Price Index in the Current Price Situation." pp. A4660-1

32. AREA DEVELOPMENT. Extension of remarks of Sen. Thurmond expressing his opposition to the proposed area redevelopment bill. p. A4663

33. TRANSPORTATION. Sen. Wiley inserted a letter from the General Steampship Agencies pointing out the "tremendously impressive savings which have been already realized, thanks to the movement of surplus farm products via the direct, all-water route from the Midwest through the present St. Lawrence seaway." pp. A4669-70

34. FOREIGN AID. Extension of remarks of Sen. Dworshak inserting an editorial urging reappraisal of the foreign aid program. pp. A4675-6
Rep. Chiperfield inserted an editorial and a report by Rep. Bass favoring the foreign aid program. pp. A4691-2, A4707

35. ELECTRIFICATION. Sen. Sparkman inserted an editorial, "TVA's Challenge--After 25 Years." pp. A4679-80

36. LIVESTOCK. Rep. Polk inserted an editorial, "Meat Promotion Up Again," emphasizing the need of "being sure any meat promotion moves are right before they are made." pp. A4685-6

37. STATEHOOD. Rep. Poage inserted a letter he had written pointing out "what seems to be [illegible] an obvious weakness in the pending statehood bill." pp. A4687-88

38. TOBACCO. Rep. Lankford inserted two articles discussing the growth and marketing of tobacco in Md. pp. A4694-95

39. FARM PROGRAM. Extension of remarks of Rep. Schwengel discussing farm policies, in which he states that "it is becoming increasingly clear that political management of agriculture does not work very well," and inserting a magazine article discussing farm conditions. pp. A4706-07

40. FARM DRAINAGE; WILDLIFE. Extension of remarks of Rep. Reuss urging the enactment of legislation to restrict farm draining projects harmful to wildlife, stating that "there is not the slightest doubt that the Department of Agriculture's farm drainage program, as administered under existing law, has in many cases worked directly counter to the best interests of wildlife, water, and even soil conservation," and inserting an article and letter discussing the matter. pp. A4717-18

Calendar No. 1651

85TH CONGRESS
2d Session

SENATE

REPORT
No. 1621

AMENDING SECTION 161 OF THE REVISED STATUTES WITH RESPECT TO THE AUTHORITY OF FEDERAL OFFICERS AND AGENCIES TO WITHHOLD INFORMATION AND LIMIT THE AVAILABILITY OF RECORDS

MAY 21, 1958.—Ordered to be printed

Mr. HENNINGS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 921]

The Committee on the Judiciary, to which was referred the bill (S. 921), to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to clarify the scope of the authority granted to the heads of executive departments under section 161 of the Revised Statutes and to make it clear beyond any doubt that this statute in no way authorizes withholding of information from the public or limiting the availability of records to the public.

STATEMENT

SECTION 161 OF THE REVISED STATUTES (5 U. S. C. 22)

Section 161 of the Revised Statutes provides:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers, and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it.

Essentially, this section is a codification of similar provisions in the early acts of Congress establishing various executive departments, including a Department of Foreign Affairs, a Department of War, a Treasury Department, and a Department of the Navy. (See note to 5 U. S. C. 22.) It has been upheld by the Supreme Court as a constitutional exercise of congressional power (*Boske* v. *Commingore* (177 U. S. 459 (1900)).

Nothing in the legislative history of section 161 shows that Congress intended this statute to be a grant of authority to the heads of the executive departments to withhold information from the public or to limit the availability of records to the public. On the contrary, its history indicates that its basic provisions were first enacted in 1789 as part of a series of acts of Congress aimed at organizing the new government and providing for necessary, routine, "housekeeping" procedures.

Section 161's earliest antecedent, section 2 of the act of July 27, 1789, by which was established a Department of Foreign Affairs, read simply:

> SEC. 2. *And be it further enacted*, that there shall be in the said department, an inferior officer, to be appointed by the said principal officer, and to be employed there as he shall deem proper, and to be called the chief clerk in the Department of Foreign Affairs, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall during such vacancy have the charge and custody of all records, books, and papers appertaining to the said Department.

Almost identical language appears in the act of August 7, 1789, establishing a Department of War; in the act of September 2, 1789 establishing a Treasury Department; and in the act of April 30, 1798 establishing a Department of the Navy.

The journals of both the Senate and House of Representatives are barren of evidence from which can be determined the intent of Congress in enacting the statutory antecedents of section 161, but clearly the language of the early statutes from which section 161 was derived shows no intent by Congress to bestow authority to withhold information from the public or to limit the availability of records to the public.

Likewise, no such intent appears from the language of section 161 as presently written. The clear import of the language of this section, taken as a whole, is that Congress intended merely to grant to the head of each of the executive departments the authority to "prescribe regulations" governing the day-to-day "housekeeping" operations of his department.

That this interpretation of section 161 is the correct one is strongly supported by the testimony of the Attorney General of the United States before the Subcommittee on Constitutional Rights on March 6, 1958. During the course of his testimony, the Attorney General variously referred to section 161 as a "bookkeeping" statute, a "keeping of custody" statute, and a "housekeeping" statute. He stated that when the statute has been cited (as the basis for not giving information) it has been cited incorrectly, and he said he did not believe the statute is the basis for not giving information.

MISUSE OF SECTION 161

Despite the obvious "housekeeping" nature and purpose of section 161, it has been openly cited in recent years by a number of executive departments and agencies as authority for withholding information from the public and limiting the availability of records to the public.

The committee has found that this section has been specifically cited as such authority by the following executive departments:

Department of Agriculture
Department of Defense
Department of Interior
Department of Justice
Department of Labor
Department of State
Post Office Department

An illustrative example of the manner in which section 161 has been cited as authority to withhold information and deny access to records is contained in a letter sent to the Subcommittee on Constitutional Rights on May 22, 1957, by the Department of Agriculture. In response to the subcommittee's request, the Department described the occasions on which it had refused information to Congressmen or congressional committees and set forth the basis on which the information had been refused. In an enclosure to its letter of reply, the Department stated:

> The authorities relating to access to records of the Department are title 5, United States Code, section 22 [sec. 161], authorizing regulations for the conduct of the Department's work, title 5, United States Code, section 516, giving custody of departmental records to the Secretary, and title 5, United States Code, section 1002 (c) (sec. 3 of the Administrative Procedure Act), requiring good cause to be shown for restricting the availability of information. Pursuant to these authorities, the Department has designated certain records as confidential and certain other records as of limited availability.

It should be noted that in this case the Department cited section 161 as authority to withhold information not from the public alone, but from the Congress as well.

The record of the hearings held by the Subcommittee on Constitutional Rights on the pending bill is replete with statements describing the citation of section 161 by executive departments and agencies as authority to withhold information and limit the availability of records.

Among these is the statement of Herbert Brucker, editor of the Hartford (Conn.) Courant, and chairman of the freedom of information committee of the American Society of Newspaper Editors (ASNE), the full text of which appears in the hearings, and who testified in part:

> It was the ASNE that found, through its counsel, Harold Cross, that it was this 1789 law that was used as authority for withholding from the public information about the public business. It seems that this statute was largely ignored until people began to ask questions of the departments as to where their authority came from to withhold information, and then they began to cite this statute.

V. M. Newton, Jr., managing editor of the Tampa (Fla.) Tribune, and chairman of the freedom of information committee of Sigma Delta Chi, the professional journalistic fraternity, testified that needless secrecy has been employed recently in the Federal Government. The testimony he gave included these statements:

> Executive agencies have twisted and tortured the so-called "housekeeping statute" (5 U. S. C. 22), * * * into authority for withholding information from the press, the public, and Congress * * *,
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> * * * * * * *
>
> The second line of defense for the secrecy-minded bureaucrats is the so-called housekeeping statute. This is the law (5 U. S. C. 22) which charges the agencies with the responsibility for keeping Government records in a safe place and assuring they will be handled in such a way they will not be destroyed. When the "national security" excuse has been demonstrated as not proper, many administration executives have used the housekeeping statute as their authority to hide Government papers * * *.

That such citation of section 161 constitutes misuse of this simple "housekeeping" statute is clear. On this point there seems to be no quarrel even from those who have expressed opposition to the enactment of the amendment proposed in the pending bill.

Views of the Executive Departments

The only expressed opposition to the enactment of the pending bill has come from some of the executive departments to which section 161 is applicable. (The full texts of reports, testimony, letters, and comments from executive departments, hereafter referred to, are contained in the hearings.)

Initially, the Post Office Department, the Department of Defense, and the Department of Justice submitted to the committee reports in which they opposed enactment of the bill. Then, as noted above, on March 6, 1958, the Attorney General appeared before the subcommittee and presented his views on the bill. The gist of what the Attorney General told the subcommittee on March 6, 1958, is contained in the following excerpts from his testimony:

> We do believe that S. 921 would not clarify section 161 of the Revised Statutes. In the absence of legislative history or more specific language we cannot determine with any degree of certainty the effect of S. 921 (transcript of hearings, p. 50).
>
> * * * * *
>
> This (sec. 161) is a housekeeping statute, which says they keep the records, they hold them physically. It doesn't relate at all to executive privilege (transcript, p. 52).
>
> * * * * *
>
> As long as it is made clear, either expressly or by legislative history, that this is in no way intended to impair the executive privilege that I have discussed, then I would have no

objection to it. If that were the case it wouldn't amount to much. All it would do is prevent people from citing the statute incorrectly. I think when they have cited the statute, it has been incorrectly cited because I don't believe the statute is the basis for not giving information. The basis for not giving information is an executive privilege (transcript, pp. 53–54).

The Attorney General supplemented these views in a letter sent to the subcommittee on March 13, 1958, wherein he stated that "section 161 is a legislative expression and recognition of the Executive privilege."

On April 2, 1958, the chairman of the Subcommittee on Constitutional Rights invited the head of each of the executive departments to appear before the subcommittee and present his views on the pending bill. All declined. The Department of Health, Education, and Welfare reported that section 161 did not become applicable to that Department until July 31, 1956, and stated that it would "defer to the views of other Executive departments on the merits of this bill." The other eight departments, with the exception of the Department of Defense, stated, in effect, that they agreed with and would rely on the views already expressed by the Attorney General.

The relevant comments of the various departments are as follows:

Department of State:

> The Secretary, taking advantage of your suggestion (that he might submit a written statement for the record if he were unable to appear in person), merely wishes to state that his views respecting S. 921 are in accord with those expressed by the Attorney General when he appeared before your subcommittee on March 6, 1958, as they were supplemented in the Attorney General's letter to you dated March 13, 1958.

Department of the Treasury:

> * * * the Attorney General has appeared before your subcommittee and given you the benefit of his views. The issues involved appear to be legal issues affecting the entire executive branch on which the views of the Attorney General would guide the executive branch. While we appreciate very much your invitation to appear, in these circumstances we feel that we would not have further material to submit.

Post Office Department:

> * * * We believe that the Attorney General has ably presented the views of the entire executive branch of the Government. We are not aware of any additional information that this Department might present to aid your committee in its deliberations. In view of this, the Postmaster General has directed me to advise you that the Department does not wish to be heard at this hearing.

Department of the Interior:

> * * * in view of the extended appearance and statement of the Attorney General on the subject of S. 921, I do not

feel that my appearance before your committee would aid you in your deliberations on this subject.

Department of Agriculture:

> This Department recommends against enactment of the proposed legislation. In this connection, we believe the statement of Attorney General Rogers on March 6, 1958, before your subcommittee, as supplemented by his letter of March 13, 1958, to you, fully reflects the Department's views with respect to the bill. Therefore, it appears unnecessary for this Department to testify at the hearing.

Department of Commerce:

> * * * We are still firmly against enactment of S. 921 or any similar legislative proposal.
>
> In this respect, we have carefully examined the testimony which the Attorney General gave before your subcommittee on March 6, 1958. We are in complete agreement with the views and the position he expressed at that time regarding S. 921.

Department of Labor:

> The Department of Labor remains strongly opposed to the enactment of S. 921, as stated in our report of April 30, 1957, to the Senate Judiciary Committee. We concur in the Attorney General's opposition to this bill, expressed in his statement of March 6, 1958, submitted to the subcommittee and his letter of March 14 supplementing this statement.

The views of the Attorney General expressed in his testimony before the Subcommittee on Constitutional Rights on March 6, 1958, and in his subsequent letter of March 13, 1958, which practically all of the executive departments adopted as their own views on the pending bill, were summarized by the Attorney General himself in a letter to the chairman of the subcommittee, dated April 4, 1958.

In that letter the Attorney General stated:

> My position is perfectly clear. In response to your questions I stated, and reiterate, that I have no objection to the passage of S. 921 if it is amended so as to recognize explicitly the constitutional Executive privilege.

Will Not Affect "Executive Privilege"

In the opinion of the committee, the enactment of the pending bill will in no way affect, nor is it intended to affect, what the Attorney General describes as an "Executive privilege" to withhold information from the Congress and the public.

To whatever extent such an "Executive privilege" exists, it must be founded on the principle of separation of powers under the Constitution and, accordingly, will not be repealed, amended, or impaired by the proposed amendment to section 161.

The historical review dealing with section 161 presented by the Attorney General in his letter to the Subcommittee on Constitutional Rights on March 13, 1958, is very instructive on this point. The Attorney General stated:

Section 161 of the Revised Statutes is essentially a codification of section 2 of the 1789 act creating a Department of Foreign Affairs and its counterparts for the other early executive departments (1 Stat. 28, 49, 65, 68, 553). The historical refusals of the executive branch to acquiesce in congressional demands for executive documents have been based, not on any statute alone, but on the Constitution itself, for Revised Statutes 161 itself reflects the independence of Congress and the exccutive branch of each other. The historical antecedents of Revised Statutes 161, going back to the first Congress and the legislative decision of 1789 show that it was intended to be a grant of independent authority, in accordance with and as part of the fabric of the constitutional plan of separation of powers. The statute carries out the constitutional plan by authorizing the head of each department to prescribe appropriate regulations for the custody of documents.

To show that this custody of documents is a matter placed within the executive branch, and intended to be subject only to regulation by the executive branch, one need only refer to the important distinction between the first statute setting up the Department of Foreign Affairs (the historical antecedent of R. S. 161), and its complete dissimilarity with the statute establishing the Department of Foreign Affairs under the Continental Congress, as discussed on pages 7 and 8 of my prepared statement. In the majority opinion in the Myers case Chief Justice Taft set forth in some detail the controversy in the House of Representatives in the First Congress, respecting the provisions of the bill to establish the Department of Foreign Affairs, which I discussed, pages 8–9 of my prepared statement. Even in the condensed form in which that debate can be viewed in reading the annals of Congress, that bill raised the basic question respecting the separation of powers under the Constitution.

This basic question was crystallized in two provisions of the bill. The first would have provided that at the head of the department there should be a Secretary, to be appointed by the President, by and with the advice and consent of the Senate, and "to be removable from office by the President * * *." In regard to the reference in the bill to the power of removal by the President, there was objection on the ground that any such reference might suggest that the President's power to remove stemmed from a legislative grant and was thus subject to revocation.

The second provision of the bill would have provided that there should be a chief clerk to be appointed by the Secretary who in case of vacancy in the office of the Secretary, should have the charge and custody of all records, books, and papers appertaining to the department. Congressman Benson of New York proposed to amend that second provision in order to provide that the chief clerk, "whenever the said principal officer (the Secretary) shall be removed from office by the President of the United States or in any other case of vacancy," should during such vacancy have the charge and custody of the departmental books and records. Congressman Benson

maintained that his amendment thus avoided the point as to whether the words "to be removable by the President" in the first provision might be construed to be a legislative grant. He further stated that if his amendment were adopted, he would then move to strike the words "to be removable by the President" in the first provision, and that there would thus be established a legislative construction of the Constitution that the President had the power of removal.

Both proposals were adopted. The words "to be removable by the President" in the first provision were stricken from the bill, and Congressman Benson's amendment inserting the words in regard to the removal of the Secretary by the President was also adopted in the second provision. Mr. Madison, who had been a member of the Constitutional Convention and one of the authors of the Federalist, was then a Congressman in the First Congress and took a leading role in effecting this constitutional construction. Chief Justice Taft's opinion in the Myers case declares that Mr. Madison's "arguments in support of the President's constitutional power of removal independently of congressional provision, and without the consent of the Senate, were masterly, and he carried the House."

This is the legislative decision of 1789. It established the principle that the reasonable construction of the Constitution must be that the three branches of the Federal Government should be kept separate in all cases in which they were not expressly blended, and that no legislation should be enacted by the Congress which would tend to obscure the dividing lines between the three great branches or cast doubt upon the prerogatives properly belonging by the Constitution to any one.

This historical review demonstrates clearly that in enacting the legislative antecedents of section 161, the First Congress was keenly aware of the constitutional powers of the executive branch, and scrupulously avoided any possible infringement on these powers. As a result, section 161 today is a carefully tailored, constitutional exercise of *congressional* power. See *Boske* v. *Commingore* (177 U. S. 459). In that case, the Supreme Court said (at p. 468):

> The Constitution gives Congress power to make all laws necessary and proper for carrying into execution the powers vested by that instrument in the Government of the United States or in any Department or officer thereof (Constitution, art. 1, sec. 8).

The Supreme Court went on to quote approvingly an extract from *Logan* v. *United States* (144 U. S. 263) in which it had earlier said:

> Every right created by, arising under or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object. (See *Boske* v. *Comingore*, supra, at 468–469.)

The Supreme Court has held that under section 161 an order of the Attorney General, as the head of 1 of the 10 executive departments, removing from his subordinates in the Department of Justice and centralizing in his own office the determination to limit access by the judicial branch to the records of the Department, is valid. The majority opinion in that case states that the Supreme Court has never passed on the question as to whether Revised Statutes, section 161 authorizes the head of 1 of the 10 executive departments to deny access by the judicial branch to those records. *United States ex rel. Touhy* v. *Ragen* (340 U. S. 462, 468, and 469 (1941)).

The amendment proposed in the pending bill, by explicitly stating *what the statute does not authorize*, will simply clarify the scope of the authority granted by Congress to the heads of the executive departments, and in no way will impair any "Executive privilege" or Executive order or power flowing from the Constitution itself.

Will Not Amend or Repeal Other Statutes

By its very terms, the proposed amendment is limited in its application to section 161 of the Revised Statutes. The amendment is not intended, nor should it be construed, to amend or repeal any other statute which may authorize the withholding of information from the public or limiting the availability of records to the public.

Attached to this report are the reports of the executive departments and agencies which have been submitted to the committee on this legislation.

Office of the Postmaster General,
Washington, D. C., April 15, 1957.

Hon. James O. Eastland,
Chairman, Committee on the Judiciary,
United States Senate.

Dear Mr. Chairman: Reference is made to your request for a report on S. 921, a bill to amend section 161 of the revised statutes with respect to withholding information and the availability of records of the executive departments of the Government.

This bill will add a new sentence to section 161 of the revised statutes, reading:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

The Department is opposed to enactment of this bill.

The revised statute to be amended is codified in title 5, United States Code, section 22. It reads:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

On a number of occasions this section has been considered by the courts of the United States. They have uniformly held that the section is constitutional and that its evident purpose is to furnish each executive department head with authority to regulate the conduct of its officers and employees and the distribution and performance of the functions of the department.

It is on the basis of this law that each department head instructs his subordinates and directs them in the manner in which they shall perform their duties. Under it, the Postmaster General has issued regulations which forbid the disclosure of departmental records or information by employees. The current regulations published in sections 114.3 and 114.4 of the Postal Manual (also secs. 4.3 and 4.4, title 39, C. F. R.), read, in part, as follows:

"The following records, documents, and information are confidential, and may not be disclosed by subordinate officers or employees of the Department without authorization: (*a*) Reports of postal inspectors; (*b*) records of the Postal Inspection Service; (*c*) names of post office box holders; (*d*) names and addresses of post office patrons and former patrons, except as provided in 123.5; (*e*) records regarding mail matter; (*f*) records regarding postal savings accounts; (*g*) records regarding money orders."

These regulations are directed to employees of the Department rather than to members of the public although they are published so that the public will be aware of them. They do not, as such, constitute a decision by the Postmaster General that he will not disclose these records and information when request therefor has been made to him instead of his subordinates. It should be observed, however, that for many years the Postmasters General have refused to make available to the public or to Congress reports of postal inspectors or records of the Post Office Inspection Service. On particular occasions other records and information have been released when the conditions recited in section 114.4 of the Postal Manual (39 C. F. R. 4.4) have been satisfied. For the information of the Committee, these regulations are attached hereto.

If the law is amended as proposed by these bills, we believe it will prohibit the Postmaster General from instructing his employees that they may not release to the public certain information. We believe that the law as presently written should remain unchanged. It does not constitute authority in the heads of executive departments to withhold records and information. Authority of executive heads to withhold information from the public stems from the basic authority of the President under the Constitution which was given statutory recognition by title 5, United States Code, section 1002.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

MAURICE H. STANS,
Deputy Postmaster General.

114.453 Introduction: Information on Postal Matters

114.3 PRIVILEGED MATTER

The following records, documents, and information are privileged matter, and may not be disclosed by subordinate officers or employees of the Department without authorization:

a. Reports of postal inspectors.
b. Records of the Postal Inspection Service.
c. Names of post office box holders.
d. Names and addresses of post office patrons and former patrons, except as provided in 123.5.
e. Records regarding mail matter.
f. Records regarding postal savings accounts.
g. Records regarding money orders.

114.4 AVAILABLE RECORDS

.41 Formal hearing records. You may inspect formal records of proceeding in which a hearing has been held or offered if you have a proper interest in them.

.42 Conditions. You may inspect all other records of the Department or field service if permitted to do so by the head of a bureau or office in the Post Office Department. In making such determinations, the following items will be taken into consideration:

a. The interest of the person requesting permission to make the inspection.
b. Whether disclosure of the information contained in the records will violate the privacy of mail matter.
c. Whether the release of the record will jeopardize future Government access to information.
d. Whether the release of the record at the time is premature and will improperly affect a pending action.
e. Whether the disclosure of the record will have the effect of hindering free administrative decisions in the same or similar matters in the future.
f. Whether the purpose for which the record is sought is prejudicial to the public interest.
g. Whether the record is already otherwise made public, such as reports of public hearings and conferences, recorded maps, plats and documents, records published for the information of the public, and material of a similar public nature.

.43 Transfer of records. All records of the Post Office Department and its field service are the property of the Department. Postmasters and other employees are not authorized to turn over such records to other persons without authorization from the head of a bureau or office of the Post Office Department.

.44 Compliance with subpenas duces tecum. Postmasters and postal employees will comply with a proper subpena duces tecum issued by a court of record only after consultation with the Post Office Department and authorization from the Department. When employees are authorized to comply with subpenas duces tecum, they will not leave the records themselves with the court but will leave copies prepared for that purpose.

.45 Compliance with summons.

.451 A postmaster or other postal employee will comply with a summons requiring his appearance in court. He will not testify as to names and addresses of post office patrons, mail matter, postal savings accounts, or money orders unless he is specifically directed to do so by the court after first calling attention of the court to this regulation.

.452 Postal inspectors and other employees having possession of inspectors' reports or Inspection Service records are prohibited from presenting such reports, records, or information in a State court or for the use of parties to a suit or habeus corpus proceedings in a Federal court, if the United States is not a party in interest. They will inform the parties interested that the regulations of the Post Office Department prohibit them from furnishing official reports, records, or information direct unless authorized by the Department. Should an attorney for a private litigant attempt to compel an employee to disclose sources of official information or similar privileged matter, the employee will decline to produce the information or matter and state that it is privileged and cannot be disclosed without specific approval from the Department.

.453 When appearing as a witness for the United States in Federal grand jury proceedings, criminal prosecutions of violations of postal laws, suits brought by the United States, or other actions in which the United States is a party in interest, postal inspectors and other officers and employees will testify as to their knowledge of the facts in the matter involved. With respect to privileged matters, each case must be given individual consideration as it arises. The Department will offer every possible assistance to the courts, but the question of disclosing privileged information is a matter entirely in the discretion of the head of the Department.

.46 Costs. The head of any bureau or office of the Post Office Department may authorize copies of records which are open to public inspection to be furnished to members of the public at the cost of the person requesting them.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D. C., April 17, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on S. 921, 85th Congress, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes (5 U. S. C. 22) now provides that:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

S. 921 would amend this statute by adding thereto the following sentence:

"This section does not authorize withholding information from the public or limit the availability of records to the public."

This proposed amendment purports to affect the duty of the Executive to safeguard certain information in the public interest. It is the view of the Department of Defense that it does not do so.

The Defense Department's view is based on its understanding that section 161 in its present form is declaratory of existing fundamental law. As it stands, this section reflects the recognition by Congress of the necessity of certain reasonable procedures employed by the Executive in the execution of the duties imposed by the Constitution, particularly, the duty to faithfully execute the laws. The suggested amendment which attempts to qualify this recognition with respect to the duty to safeguard certain information could only create uncertainty as to the source and extent of the Executive's responsibility in this area.

The Department of Defense considers that the safeguarding of certain information is essential to the proper functioning of Government, and is, accordingly, in the public interest. The categories of information which should be protected are carefully described in regulations promulgated by the Secretary of Defense, Department of Defense Directives 5200.1 and 5200.6.

A good example of information requiring protection is that gathered in the course of an investigation. It is considered that failure to safeguard the sources of information supplied on a confidential basis would necessarily result in a reluctance on the part of people who are approached by investigative agents to cooperate with such agents. In addition, the investigative process may develop information which is hearsay or otherwise unreliable, the indiscriminate dissemination of which might do great and unjust harm to individuals. Moreover, certain communications between individuals are privileged from disclosure on the basis of historical principles of law, such as in the case of the doctor and patient. It would be anomalous for the Federal Government to adopt a policy in relation to its own officers and employees at variance with this long-established legal principle. Equally cogent and compelling reasons can be offered with respect to each of the other categories covered in Department of Defense directives to demonstrate that the public interest may be best served by nondisclosure of this information.

It is worthy of note that Congress itself has recognized the importance of protection of certain types of information by the enactment of various statutes, such as those dealing with trade secrets and financial data (18 U. S. C. 1905), with information on income-tax returns (26 U. S. C. 6103), and with information in census statements (13 U. S. C. 9).

It is considered that the regulations of the Department of Defense, including those of the military departments, are reasonable and adequate for keeping the public fully informed as to the Department's activities, while at the same time assuring the protection of information which should be safeguarded in the overall national interest.

For the above reasons the Department of Defense strongly recommends against the enactment of Senate bill 921 to amend section 161 of the Revised Statutes.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ROBERT DECHERT.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, April 30, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: This is with further reference to the request for my views on S. 921, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes provides department heads shall have authority to prescribe regulations not inconsistent with law on various aspects of departmental business, including the custody, use, and preservation of records, papers, and property. The bill would add language that the section does not authorize the withholding of records or information.

Under authority of section 161, regulations have been issued by department and agency heads restricting the functions of subordinates in relation to disseminating information. The proposed measure is objectionable in that it would appear to remove this authority, which is essential to effective executive management and protection of Government records. As pointed out by the Supreme Court in *United States ex rel Touhey* v. *Ragan, Warden, et al.* (304 U. S. 462), the variety of information contained in the files of any Government department and the possibilities of harm from unrestricted disclosure make obvious the necessity and usefulness of centralizing determination of whether information is to be restricted or disclosed, and the manner of so doing.

The proposed bill is also objectionable in that it is subject to the interpretation that release of all Government documents and information is required. This would be contrary, not only to both public and private interests in many cases, but also to the expressed intent of Congress that records and documents compiled under various programs should be properly protected.

For the reasons stated, I am strongly opposed to the enactment of this bill.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES T. O'CONNELL,
Acting Secretary of Labor.

JUNE 13, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes of the United States (5 U. S. C. 22), provides:

"Departmental Regulations.—The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

This bill would add to the quoted statute a sentence reading: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Insofar as the purpose of this legislation is to assure the full and free flow of information to the public not inconsistent with the national interest, the Department of Justice is in full accord. We believe that within limits the executive and legislative branches should keep the public informed as to their activities, and should make available information, papers, and records. Without doubt the legislative and executive branches are in agreement with this fundamental principle.

The Attorney General has publicly stated his awareness of the importance of seeing to it that the obstacles to the free flow of information are kept to a minimum. In line with this, provision has been made for pardons and commutations of sentence to be matters of public record. Likewise, the settlement of litigation, the disposition of Government claims, and other phases of the Department's operations are matters concerning which the public and the Congress are kept advised.

Regarding the proposed amendment, we believe that it would not clarify the present law. Considerable study has been given to it, but in the absence of legislative history or more specific language we are unable to determine with any degree of certainty its effect. If the amendment could more precisely delineate its intended effect on the authority of the executive departments under this statute to regulate the orderly access of the public to their records we would be glad to amplify our comments.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

William P. Rogers,
Deputy Attorney General.

Interstate Commerce Commission,
Office of the Chairman,
Washington, July 17, 1957.

Hon. John L. McClellan,
Chairman, Committee on Government Operations,
United States Senate, Washington, D. C.

Dear Chairman McClellan: Your letter of February 5, 1957, addressed to former Chairman Anthony Arpaia, requesting an expression of the Commission's views on a bill, S. 921, introduced by Senator Hennings, to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

Section 161 of the Revised Statutes (5 U. S. C. 22), now provides that the head of each department may prescribe regulations respecting the so-called housekeeping functions of his department, i. e., the conduct of officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining thereto. S. 921 would amend this section by adding the following new sentence:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

The provisions of section 161 of the Revised Statutes (5 U. S. C. 22), do not apply to independent regulatory commissions, such as the Interstate Commerce Commission, since that section applies only to "departments," which are defined in title 5, United States Code, sections 1 and 2 as the Cabinet departments.

Whether or not S. 921 should be enacted is, in our opinion, a matter of broad congressional policy on which we take no position.

Respectfully submitted.

OWEN CLARKE,
Chairman, Committee on Legislation.
HOWARD G. FREAS.
RUPERT L. MURPHY.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 161 OF THE REVISED STATUTES OF THE UNITED STATES (5 U. S. C. 22)

SEC. 161. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. *This section does not authorize withholding information from the public or limiting the availability of records to the public.*

O

Calendar No. 1651

85TH CONGRESS
2D SESSION

S. 921

[Report No. 1621]

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 1957

Mr. HENNINGS (for himself and Mr. PROXMIRE) introduced the following bill; which was read twice and referred to the Committee on Government Operations

FEBRUARY 21, 1957

The Committee on Government Operations discharged, and referred to the Committee on the Judiciary

MAY 21, 1958

Reported by Mr. HENNINGS, without amendment

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Calendar No. 16[illegible]

85TH CONGRESS
2D SESSION

S. 921

[Report No. 1621]

A BILL

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

By Mr. HENNINGS and Mr. PROXMIRE

JANUARY 29, 1957

Read twice and referred to the Committee on Government Operations

FEBRUARY 21, 1957

The Committee on Government Operations discharged, and referred to the Committee on the Judiciary

MAY 21, 1958

Reported without amendment

11. COTTON. Passed without amendment H. R. 11399, to authorize the Secretary to set the levels of price support for extra long-staple cotton at between 60 to 75 percent of parity. This bill will now be sent to the President. p. 10765

12. DEFENSE PRODUCTION. Passed without amendment H. R. 10969 (in place of a similar bill S. 3323), to extend the Defense Production Act for 2 years until June 30, 1960. This bill will now be sent to the President. pp. 10773-4

13. LIVESTOCK LOANS. Passed as reported H. R. 11424, to extend for 2 years, through July 14, 1961, the authority of the Secretary to extend or make supplementary advances to borrowers for special livestock loans. p. 10780

14. TOBACCO. Passed without amendment H. R. 11058, to reduce the acreage allotments of tobacco farmers who harvest more than one crop of tobacco in a year from the same acreage. This bill will now be sent to the President. p. 10780

15. NATURAL RESOURCES. Passed as reported S. 2517, to authorize the States to choose mineral lands in making selections in lieu of sections of public lands occupied before State claims were made. pp. 10781-3

16. SURPLUS FOODS. Passed without amendment H. R. 12164, to permit the donation of surplus foods to nonprofit summer camps for children without regard to the number of needy children actually enrolled. This bill will now be sent to the President. p. 10780

17. INSPECTION SERVICES. Passed without amendment S. 3873, to authorize the interchange of inspection services between executive agencies without reimbursement or transfer of funds. p. 10769

18. PROPERTY. Passed as reported S. 3142, to authorize the lease of Federal building sites until needed for actual construction. p. 10769

19. TRANSPORTATION. Passed as reported S. Res 303, to provide for a study of transportation policies in the United States by the Interstate and Foreign Commerce Committee, including the exemption provisions in the laws regulating transportation. p. 10773

20. MONOPOLIES. The Judiciary Committee ordered reported with amendment S. 11, to amend the Robinson-Patman Act to make price discrimination prima facie proof of violation of the law. p. D578

21. STATEHOOD. Began debate on H. R. 7999, to admit Alaska as a State. pp. 10766, 10786, 10803, 10804, 10804-10.

22. INFORMATION. At the request of Sen. Talmadge, passed over S. 921, to restrict the right of Federal officers to withhold information or records. p. 10765.

23. WATERSHEDS. At the request of Sen. Hruska, passed over H. R. 5497, to authorize Federal assistance for certain fish and wildlife development projects under the Watershed Protection and Flood Prevention Act. p. 10765

24. ONION FUTURES. At the request of Sen. Hruska, passed over H. R. 376, to prohibit trading in onion futures on commodity exchanges. p. 10765

25. FARMER COMMITTEES. At the request of Sen. Talmadge, passed over S. 1436, to amend various provisions of law regarding ASC committees, to provide for the administration of the farm program by farmer elected committees, etc. p. 10766

26. BUILDINGS. At the request of Sen. Hruska, passed over S. 3560, to authorize construction of a $20 million Federal building in Memphis, Tenn. p. 10766

27. TEXTILES. At the request of Sen. Talmadge, passed over H. R. 469, to protect producers and consumers against misbranding and false advertising of the fiber content of textile fiber products. pp. 10766-7

28. MINERALS. At the request of Sen. Mansfield, passed over S. 3817, to encourage exploration for minerals with Federal aid. p. 10769

29. TRANSPORTATION. At the request of Sens. Talmadge and Hruska, passed over S. 3916, to extend for two years provisions of the Shipping Act of 1916 to allow continuation of existing dual-rate contract agreements. p. 10774

30. SMALL BUSINESS. At the request of Sen. Clark, passed over H. R. 7963, to extend the Small Business Act of 1953, and increase the SBA loan authority. p. 10775

31. REORGANIZATION. At the request of Sen. Talmadge, passed over S. Res. 297, to disapprove Reorganization Plan No. 1 of 1958, to merge the Office of Defense Mobilization and the Federal Civil Defense Administration. p. 10776
Sen. Potter commended the adverse report of the Government Operations Committee on S. Res. 297, and the evaluation of the proposed merger. p. 10802

32. HUMANE SLAUGHTER. At the request of Sen. Talmadge, passed over H. R. 8308, to require the use of humane methods in the slaughter of livestock and poultry. p. 10780

33. FOREIGN TRADE. Sen. Thurmond submitted amendments to H. R. 12591, the trade agreements extension bill, proposing to limit the extension to 2 years and to require Congressional assent to Presidential action reversing findings of the Tariff Commission. p. 10804

34. EXTENSION. Sen. Johnston inserted an editorial on the death of Dr. F. Franklin Poole, President of Clemson College, S. C. pp. 10783-4

35. RECLAMATION. Received from the Interior Department a report that the Bountiful, Utah, Water Subconservancy District, had applied for a loan of $3,510,000, under the Small Reclamation Projects Act. p. 10747

ITEMS IN APPENDIX

36. FOREIGN AID. Rep. Green inserted an article, "Over $63 Million in Foreign Aid Shared by Eight Oregon Communities." pp. A5696-7

37. COTTON. Extension of remarks of Sen. Sparkman urging aid for cotton farmers and inserting an article, "Cotton's Decline, Long Foreseen, Still Pains Many Dixie Farmers--Some Quit, Wind Up On City Relief Rolls; Others Find Pinch Profits Harder." pp. A5697-8

38. DAIRY INDUSTRY. Extension of remarks of Sen. Proxmire inserting 2 Grange organization resolutions in support of his bill, S. 2952. p. A5698

BILLS PASSED OVER

The bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records was announced as next in order.

Mr. TALMADGE. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 8439) to cancel certain bonds posted pursuant to the Immigration Act of 1924, as amended, or the Immigration and Nationality Act, was announced as next in order.

Mr. TALMADGE. Over.

The PRESIDING OFFICER. The bill will be passed over.

PRICE SUPPORT FOR CROPS OF EXTRA-LONG-STAPLE COTTON

The bill (H. R. 11399) relating to price support for the 1958 and subsequent crops of extra-long-staple cotton was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. KNOWLAND. Over.

Mr. ANDERSON. Mr. President, will the Senator from California withhold his objection for a moment, while I make a statement?

Mr. KNOWLAND. I withhold my objection.

Mr. ANDERSON. The bill will allow the producers of extra-long-staple cotton—and its production is confined to about 3 States—to have their support level reduced from 75 percent to 60 percent by the Secretary of Agriculture. This will enable those producers to meet the competition of Egyptian cotton. There never has been objection to such a proposal at any time it has been brought up. I know of no objection to it now. There certainly is no objection whatever on the part of those who produce this kind of cotton in west Texas, New Mexico, Arizona, and, in a small quantity, in California. The amount of production is small, perhaps only a few thousand bales.

The producers of this type of cotton have done well in developing a market for it.

The Senator from Arizona [Mr. HAYDEN] is fully acquainted with the development of this type of cotton. I know of no objection to the proposal.

Mr. KNOWLAND. I simply questioned whether the bill was calendar business. But since there has been an explanation of the bill——

Mr. ANDERSON. I assure the able Senator from California that there is no real objection to the bill.

Mr. JOHNSTON of South Carolina. I handled the bill in the committee and reported it for the committee. I have heard of no opposition whatsoever to the bill from either side.

The bill would establish price support for extra-long-staple cotton at 60 to 75 percent of parity, instead of 75 percent as now required.

The United States does not produce its requirements of this type of cotton, and the bill would put American cotton of this type in a better competitive position with similar foreign cotton, thereby giving American producers an opportunity to develop their markets.

The PRESIDING OFFICER. Does the Senator from California renew his objection?

Mr. KNOWLAND. No; I withdraw my objection.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (H. R. 11399) was considered, ordered to a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (H. R. 5497) to amend the Watershed Protection and Flood Prevention Act, was announced as next in order.

Mr. HRUSKA. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 376) to amend the Commodity Exchange Act to prohibit trading in onion futures in commodity exchanges was announced as next in order.

Mr. HRUSKA. Over.

The PRESIDING OFFICER. The bill will be passed over.

MARIA PONTILLO

The bill (S. 2850) for the relief of Maria Pontillo was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of the Immigration and Nationality Act, Maria Pontillo shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

MISS ALLEGRA AZOUZ

The bill (S. 3042) for the relief of Miss Allegra Azouz was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of the Immigration and Nationality Act, Miss Allegra Azouz shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

FEOFANIA BANKEVITZ

The Senate proceeded to consider the bill (S. 2936) for the relief of Feofiania Bankevitz, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause and insert:

That, notwithstanding the provision of section 212 (a) (6) of the Immigration and Nationality Act, Feofania Bankevitz may be issued a visa and be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that act, under such conditions and controls which the Attorney General, after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose: *Provided*, That if the beneficiary is not entitled to medical care under the Dependents' Medical Care Act (70 Stat. 250), a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the Immigration and Nationality Act: *And provided further*, That the exemption granted herein shall apply only to a ground for exclusion of which the Department of Justice or the Department of State had knowledge prior to the enactment of this act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Feofania Bankevitz."

BERNABE MIRANDA AND OTHERS

The Senate proceeded to consider the bill (S. 2983) for the relief of Bernabe Miranda, Manuel Miranda, and Anastacio Miranda, which had been reported from the Committee on the Judiciary, with amendments, in line 5, after the name "Miranda," where it appears the first time, to insert "and," and, in the same line, after the name "Miranda," where it appears the second time, to strike out the comma and "and Anastacio Minda," so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, Bernabe Miranda, and Manuel Miranda, shall be held and considered to be the minor alien children of Sergeant First Class Elisha Miranda, a citizen of the United States.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Bernabe Miranda and Manuel Miranda."

GEORGIOS PAPACONSTANTINOU

The Senate proceeded to consider the bill (S. 3130) for the relief of Georgios Papaconstantinou, which had been reported from the Committee on the Judiciary, with an amendment, in line 4, after the word "act", to strike out "Georgios Papaconstantinou shall be held and considered to be under 21 years of age" and insert "Georgios Papakonstantinou shall be held and considered to be the minor alien child of Mr. and Mrs. Gabriel Konstantinou, citizens of the United States.", so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, Georgios Papakonstantinou shall be held and considered to be the minor alien child of Mr. and Mrs. Gabriel Konstantinou, citizens of the United States.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Georgios Papakonstantinou."

ADAMANTIA ANDRIKOPOULOUS (PAPPAS) PAPAVASILIOU

The Senate proceeded to consider the bill (S. 3305) for the relief of Adamantia Andrikopoulous (Pappas) Papavasiliou, which had been reported from the Committee on the Judiciary, with amendments, in line 5, after the name "Adamantia", to strike out "Andrikopoulous (Pappas)", and in line 8, after the words "United States", to insert a colon and "*Provided*, That no natural parent of the beneficiary, by virtue of such relationship, shall be accorded any right, status, or privilege under the Immigration and Nationality Act.", so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Adamantia Papavasiliou, shall be held and considered to be the natural-born alien child of Mr. and Mrs. George (Pappas) Papavasiliou, citizens of the United States: *Provided*, That no natural parent of the beneficiary, by virtue of such relationship, shall be accorded any right, status, or privilege under the Immigration and Nationality Act.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Adamantia Papavasiliou."

BILLS PASSED OVER

The bill (S. 3493) to amend the District of Columbia Unemployment Compensation Act of 1935, as amended, was announced as next in order.

Mr. TALMADGE. Mr. President, I ask that the bill go over, as not being proper calendar business.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

The bill (S. 3918) to authorize the sale of nonessential vessels of the merchant marine national defense reserve fleet was announced as next in order.

Mr. TALMADGE. Mr. President, I ask that the bill go over, as not being proper calendar business.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

The bill (H. R. 7999) to provide for the admission of the State of Alaska into the Union was announced as next in order.

Mr. TALMADGE. Mr. President, I ask that the bill go over, as not being proper calendar business.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

EXCHANGE OF CERTAIN LANDS

The Senate proceeded to consider the bill (S. 3569) to authorize the Secretary of the Interior to exchange certain Federal lands for certain lands owned by the State of Utah, which had been reported from the Committee on Interior and Insular Affairs with an amendment, on page 2, line 19, after the word "east", to strike out "864.65" and insert "864.35", so as to make the bill read:

Be it enacted, etc., That the Secretary of the Interior is authorized and directed to accept on behalf of the United States from the State of Utah the conveyance in fee simple of the following described lands situated in such State:

Beginning at United States Government monument numbered 6 (monument numbered 6 is 876.31 feet south and 2,453.795 feet east more or less from the northwest corner of section numbered 4, township 1 south, range 1 east, Salt Lake meridian) and running thence south 480 feet to the south boundary of the United States Bureau of Mines property; thence west 60 feet; thence north 400 feet; thence west 544.5 feet; thence south 400.0 feet; thence west 60.0 feet; thence north 480 feet; thence east 664.5 feet more or less to the point of beginning and containing 2.32 acres more or less.

SEC. 2. In return for the lands described in the first section of this act the Secretary of the Interior is authorized and directed to convey by quitclaim deed to the State of Utah all right, title, and interest of the United States in and to the following described lands situated in such State:

PARCEL NO. 1

Beginning at a point 664.5 feet west of United States Government monument numbered 6 (monument numbered 6 is 876.31 feet south and 2,453.795 feet east more or less from the northwest corner of section numbered 4, township 1 south, range 1 east, Salt Lake meridian) and running thence north 160.0 feet; thence east 864.35 feet more or less to the east boundary of the United States Bureau of Mines property; thence north 0 degrees 00 minutes 50 seconds west 287.6 feet; thence south 67 degrees 11 minutes 40 seconds west 366.35 feet; thence north 88 degrees 21 minutes 10 seconds west 682.72 feet; thence south 325.41 feet; thence east 155.6 feet more or less to the point of beginning and containing 4.69 acres more or less.

PARCEL NO. 2

Beginning at a point 480 feet south of United States Government monument numbered 6; thence north 89 degrees 59 minutes 10 seconds east 200.00 feet; thence north 0 degrees 00 minutes 50 seconds west 136.10 feet; thence south 55 degrees 45 minutes 00 seconds west 241.92 feet more or less to the point of beginning and containing 0.31 acres more or less.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

EXCHANGE OF CERTAIN PROPERTIES WITHIN DEATH VALLEY NATIONAL MONUMENT, CALIF.

The bill (H. R. 10349) to authorize the acquisition by exchange of certain properties within Death Valley National Monument, Calif., and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

BILL PASSED OVER

The bill (S. 1436) to amend section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended, to provide for administration of farm programs by democratically elected farmer committeemen was announced as next in order.

Mr. TALMADGE. I ask that the bill go over, as not being proper calendar business.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

CONVEYANCE OF CERTAIN PROPERTY TO THE VILLAGE OF CAREY, OHIO

The bill (S. 3139) to repeal the act of July 2, 1956, concerning the conveyance of certain property of the United States to the village of Carey, Ohio, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the act of July 2, 1956 (70 Stat. 486, ch. 496), is hereby repealed.

REMOVAL OF CLOUD ON TITLE TO CERTAIN REAL PROPERTY, STATE OF ILLINOIS

The bill (H. R. 7081) to provide for the removal of a cloud on the title to certain real property located in the State of Illinois was considered, ordered to a third reading, read the third time, and passed.

RECONVEYANCE OF CERTAIN REAL PROPERTY TO NEWAYGO, MICH.

The bill (H. R. 10009) to provide for the reconveyance of certain surplus real property to Newaygo, Mich., was considered, ordered to a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (S. 3560) to authorize the construction of a courthouse and a Federal office building in Memphis, Tenn., and for other purposes, was announced as next in order.

Mr. HRUSKA. By request, I ask that the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 3912) to amend the Atomic Energy Act of 1954, as amended, was announced as next in order.

Mr. TALMADGE. Mr. President, I ask that the bill go over, as not being proper calendar business.

The PRESIDING OFFICER. Objection being heard, the bill will be passed over.

The bill (H. R. 469) to protect producers and consumers against misbranding and false advertising of the fiber content of textile fiber products, and for other purposes, was announced as next in order.

the Department concerned to make intra-departmental transfers between such limitations. When an appropriation is subject to such a limitation, there shall be charged against it the cost of assets received, payments made and becoming due, and other liabilities becoming payable. At the end of the fiscal year, any unused balance of the limitation shall lapse, except that payments may be made for liabilities incurred within the limitation during the fiscal year for which the limitation was provided. Obligations incurred during the fiscal year concerned, which do not become payable during that year, shall be paid out of the limitation in effect when the obligations become payable. It shall be in order to include accrued-expenditure limitations in appropriation bills that apply to funds previously appropriated. It shall be in order to include, in any appropriation bill, provisions authorizing departmental transfers of unused portions of accrued-expenditure limitations.

Sen. Hayden submitted an amendment to make effective the requirement for accrued-expenditure estimates only if the item is available for obligation for more than 1 year. After debate, the yeas and nays were ordered on the amendment. Sen. Hayden then withdrew his amendment. pp. 14393-5

Sen. Fulbright stated that the Senate had power to initiate expenditure bills and that the Constitution only requires that direct revenue measures, not appropriations, begin in the House. He defended public debt transactions as a financing method and referred to provisions of capital funds for CCC, Public Law 480 operations, etc., as examples. pp. 14379-80

17. INFORMATION. Passed without amendment H. R. 2767 (in place of S. 921, an identical bill), to amend Sec. 161 of the Revised Statutes to state that this section does not authorize the withholding of information or limiting the availability of records to the public. This bill will now be sent to the President. pp. 14356-67

18. WATER DEVELOPMENT. Passed without amendment H. R. 13138, to amend the Coordination Act so as to provide more effective integration of fish and wildlife conservation programs with Federal water development programs. This bill will now be sent to the President. pp. 14381-2

19. PERSONNEL. Passed with amendment H. R. 4640, to amend the Civil Service Retirement Act to permit persons transferring to non-Act positions to retain voluntary contribution accounts. Agreed to a committee amendment to clarify the provisions permitting withdrawal of contributions at any time prior to the receipt of annuity payments. pp. 14367-71

20. FORESTRY. The Interior and Insular Affairs Committee reported without amendment the following bills:

S. 3682, to authorize the Secretary to convey certain national forest lands in Ariz. to the Univ. of Ariz. (S. Rept. 2070);

H. R. 6038, to authorize transfers of land between the Sequoia National Forest and the Kings Canyon National Park, Calif. (S. Rept. 2079); and

H. R. 6198, to authorize the transfer of not more than 10 acres of land from the Sequoia National Park to the Sequoia National Game Refuge in Sequoia National Forest, Calif. (S. Rept. 2080). p. 14343

The Interior and Insular Affairs Committee ordered reported without amendment S. 4053, to extend the boundaries of the Siskiyou National Forest, Ore. p. D769

21. BUTTER; MARGARINE. The Armed Services Committee ordered reported without amendment H. R. 912, to provide for the serving of oleomargarine or margarine in the Navy. p. D768

22. REA. Sen. Humphrey inserted the ruling of the Comptroller General of July 21, 1958, on the REA loan to Central Iowa Power Cooperative, which GAO claimed was not authorized by law on the basis that part of the service to be offered paralleled and competed with private industry. He criticized the ruling and asserted that it could have a highly detrimental effect on the REA loan program. Sen. Aiken spoke in favor of the REA program. pp. 14384-8

23. PERSONNEL. Received from the Interior Department a proposed bill "to permit variation of the 40-hour workweek of Federal employees for educational purposes"; to Post Office and Civil Service Committee. p. 14342

24. PUBLIC DEBT. Sen. Martin, Pa., inserted two editorials criticizing the size of the Federal debt, one urging reductions in expenditures to balance the budget and the other criticizing the failure to achieve budget surpluses in recent years of prosperity. pp. 14383-4

25. LEGISLATIVE PROGRAM. Sen. Johnson announced that following consideration of S. 4208, the space agency bill (which was the pending business), the Senate would take up. S. 3185, to promote the conservation of fish and wildlife by requiring the Secretary of the Interior to approve certain Federal Power Act licenses. pp. 14395-6

ITEMS IN APPENDIX

26. FARM PROGRAM. Sen. Robertson inserted a newspaper editorial, "Return to a Sound Principle," which commended the farm bill as passed by the Senate, and stated that "the bill represents an important step toward helping farmers adjust their production to market demands instead of depending upon Government subsidies." pp. A6854-55

27. GOVERNMENT ETHICS. Sen. Neuberger inserted two articles discussing the need for establishing a code of ethics for Government service. p. A6855

28. ELECTRIFICATION. Rep. Evins inserted a statement by Rep. Baker on the reasons why the latter thought TVA should have a self-financing program. pp. A6857-58
Extension of remarks of Rep. Broomfield urging the defeat of S. 1869, to provide TVA with the authority to issue bonds to finance the construction of new generating capacity. p. A6878

29. SMALL BUSINESS. Rep. Springer inserted a newspaper editorial urging enactment of legislation to provide tax relief for small business. p. A6858

30. FORESTRY. Sen. Neuberger inserted an editorial from the American Forest magazine, "Sustained Yield Versus Continuous Growth," urging that S. 3051, the Klamath Indian land bill, include provisions for the future management of the forest lands involved on a sustained yield basis. p. A6861

31. TRANSPORTATION. Extension of remarks of Rep. Moore commending the House for passage of S. 3778, the omnibus transportation bill. p. A6862

32. CONSERVATION. Rep. Metcalf praised the work of Dr. Joseph W. Severy, who is retiring from his position as professor of botony at the Montana State University, and stated "he ranged far into the related field of wildlife and resource management to make a solid contribution to conservation throughout the Nation." pp. A6878-79

proposal to extend the pattern of the IGY into other international years—years for medical cooperation and for cultural and scientific exchange. This is an idea worthy of most enthusiastic endorsement.

In line with this particular suggestion, on July 2 of this year I introduced a resolution—Senate Concurrent Resolution 99—inviting the President to extend to the other nations of the world, through the World Health Organization, and related organizations, an invitation for the designation of an International Health and Medical Research Year to "be dedicated to intensive international cooperation toward the discovery and exchange of the answers of coping with major killing and crippling diseases which afflict mankind."

In initiating other kinds of international years, however, we should not neglect to extend the IGY beyond its present scheduled term. We should keep expanding the horizons of our cooperation across as many scientific and cultural areas as we can, for it is by this means we can lay a solid groundwork for the establishment of lasting peace.

At this point, Mr. President, I wish to quote portions of recent articles from the New York Times and the Christian Science Monitor relating to the proposal approved at Amherst.

From the New York Times of July 17, 1958, page 53:

An extension of the pattern of the International Geophysical Year into medical, cultural, and wider scientific exchanges was proposed here today.

Dr. Harlow Shapley, Harvard University astronomer, made the proposal at the closing session of the third annual American Humanities Seminar.

It would "cost us less in 1 year than 1 futile battleship to offset the military diplomacy which has brought the nuclear world near the explosion point," Dr. Shapley told an audience of about 150 at the University of Massachusetts.

He said, "Let us undertake either with major nations or with the Soviet Union alone other international years of cooperation * * * in medical research and in cultural and scientific exchange."

Later the proposal was adopted by the conferees as part of a general statement of the objectives covered by the seminar. A copy is to be sent to President Eisenhower.

From the Christian Science Monitor of July 18, 1958:

Expanding the International Geophysical Year into years would cost us less than one futile battleship to offset the military-diplomacy which has brought the nuclear world near the explosion point.

Dr. Harlow Shapley, professor emeritus of astronomy at Harvard University and past president of the Academy of Arts and Sciences proposed an extended IGY program July 16. He was addressing the third annual American Humanities Seminar sponsored by the Humanities Center for Liberal Education and the University of Massachusetts, in cooperation with the President's Committee on Scientists and Engineers.

"We must turn to areas where full cooperation and complete intercommunication are going on," said Dr. Shapley to the 125 leaders of education and industry seeking to bridge the gap between science and the liberal arts.

"Let us undertake, either with many nations or with the U. S. S. R. alone, other international years of cooperation," requested the scientist.

"Along with hundreds of astronomers from a score of countries," he said, "I expect to be in Moscow in a few weeks at meetings of the International Astronomical Union.

"Danger from sinking continents or changes in the earth's atmosphere do not seem likely to erase mankind," said Dr. Shapley. "I'm glad to report that this globe looks pretty safe for ingenious man except for one horrible factor. Man's worst foe is man.

"With manmade concussions, radiations, and poisons, he can carry out the enterprise of destroying himself."

The arguments in favor of extending the International Geophysical Year into years, as presented in this article from the Christian Science Monitor, make a most impressive case in favor of such an extension.

I am hopeful that Senate Concurrent Resolution 99 will be reported favorably, and that our Government will take the lead in this field, and take the world off the dead center which can lead to catastrophic results. By reaching out into new areas of human endeavor the Government of the United States has a glorious opportunity, even as our scientists meet in Moscow, to take the lead and ask for extension of peaceful cooperation, and the broadening of the endeavors of our scientists in the field of medical research and scientific understanding.

CONSTRUCTION OF AERONAUTICAL RESEARCH FACILITIES

Mr. JOHNSON of Texas. Mr. President, Calendar No. 2088, House bill 11805, has been reported without objection from the Special Committee on Space and Astronautics. With the concurrence of the minority leader, I move that the unfinished business be temporarily laid aside, and that the Senate proceed to the consideration of House bill 11805.

I wish to make a very brief statement in connection with the bill. It is necessary that the Senate act promptly.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 11805) to promote the national defense by authorizing the construction of aeronautical research facilities by the National Advisory Committee for Aeronautics necessary to the effective prosecution of aeronautical research.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, the purpose of this bill is to authorize certain construction projects, and the procurement of certain equipment, at installations of the National Advisory Committee for Aeronautics, which will be absorbed by the new National Aeronautics and Space Administration within 90 days, in accordance with the National Space Act of 1958 signed by the President on Tuesday of this week.

Although under previous statutes governing the National Advisory Committee for Aeronautics prior authorization of construction projects was unnecessary, under the provisions of the new Space Act all such appropriation requests which exceed $250,000 in amount will have to be authorized prior to appropriations. Accordingly, the members of the committee and the Agency officials deemed it desirable, if not indeed necessary to avoid possible legal complications resulting in delay, to approve the authorizations contained in H. R. 11805, even though the appropriations are contained in the Independent Offices appropriation bill agreed to by the Senate yesterday.

The bill provides authority for the construction or acquisition of new research facilities in the amount of $23,458,000; $5,328,000 for the modernization of existing facilities; $260,000 for the modernization of supporting facilities; and $887,000 for general plant and utility improvements, for a total authorization of $29,933,000.

These expenditures are to be made at four installations of the NACA. These are the Langley Laboratory in Virginia, Ames Laboratory in California, Lewis Laboratory in Ohio, and Wallops Station in Virginia.

The Special Committee on Space and Astronautics also ordered reported, and the report has been filed today, the first authorization bill for construction and equipment facilities submitted by the Administration for the new Space Agency. This bill authorizes capital expenditures in the amount of $47,800,000.

With the bill presently before the Senate, these two measures will afford a substantial beginning, and one that I hope can be made without delay, for the increased efforts that the Congress expects to be made in the field of civilian space technology by the new National Aeronautics and Space Administration.

I hope to be able to bring the second authorization bill before the Senate tomorrow for its approval. At this time I ask that the Senate give its immediate approval to H. R. 11805.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. JOHNSON of Texas. I yield.

Mr. HUMPHREY. Does the Senator from Texas contemplate, at any time in the near future, bringing up for action in the Senate a bill which has been reported from——

Mr. JOHNSON of Texas. I will talk with the Senator about any bill he wishes to discuss. Our Policy Committee has laid out a program for next week. I do not have the calendar before me. As soon as the morning hour is completed, I shall be glad to discuss with the Senator any bills in which he is interested.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill was ordered to a third reading, read the third time, and passed.

Mr. JOHNSON of Texas. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SPARKMAN. Mr. President, I move to lay that motion on the table.

The motion to reconsider was laid on the table.

Mr. JOHNSON of Texas. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JOHNSON of Texas. Am I correct in stating that under the unanimous-consent agreement the Senate will now resume the consideration of Calendar No. 1651, Senate bill 921?

The PRESIDING OFFICER. The Senator is correct.

AUTHORITY OF FEDERAL OFFICERS AND AGENCIES TO WITHHOLD INFORMATION AND LIMIT THE AVAILABILITY OF RECORDS

The Senate resumed the consideration of the bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

DAYS, EVEN HOURS, ARE PRECIOUS—VI

Mr. FLANDERS. Mr. President, in this one of the series of talks on the Middle East, I address myself to the last "whereas" and the first "resolved" of the concurrent resolution, Senate Concurrent Resolution 106, which I offered on July 18. They read as follows:

Whereas by certain actions of our Government the friendship of the Arab peoples can be promoted: Therefore, be it

Resolved, That the sending of troops to Lebanon be approved by the Congress as a necessary means of stabilizing a dangerous situation while more constructive steps are being taken.

Let me in the first place, Mr. President, call attention to the limited usefulness of armed intervention. We have injected a display of our unsurpassed armed might with the purpose of stabilizing a movement dangerous to the freedom of the Western World. What that danger is I have touched upon in my earlier remarks on the importance of the oil supply to Western Europe, the endeavor of the Soviet Government to control that supply, and the sweeping, worldwide victory of communism which would result if that endeavor succeeds.

I have pointed out, Mr. President, that the unsettled claims of the Arab homedwellers and homeowners, dispossessed in the occupation of Israel, form an ideal, ready-made issue for Communist use. The Soviet Government does not have to invent or generate a new issue. One is already at hand.

Furthermore, there is a broader issue which the Soviet Government finds readymade for its use. This is the swelling tide of Arab nationalism, with which we should be in sympathy. Instead of that our armed intervention, necessary and well-intentioned though it be, puts us in opposition to the hopes of the people of Jordan and its neighboring states. It is a situation which we cannot allow to continue.

Armed intervention is like a powerful medicine, itself a deadly poison, useful only for wise application in a critical emergency. Not all the millions of our Armed Forces, the gunpower of our fleets, the bomb-carrying capacity of our Air Force, the multimegatons of our atomic and hydrogen explosives can still the aspiration of the Arabs for self-determination, or reduce by the minutest degree their indignation at the wholesale and unrequited seizure of their lands.

Unless the time bought by armed strength is promptly employed for wise statesmanship, disaster faces the free world.

Mr. President, the time is short. The days, the hours, the minutes are going by. Which one of us, in this hour, would be willing to exchange places with the brave young King of Jordan? There he sits, precariously, on a throne protected by foreign force, ruling over a people more than half of whom have been driven from their homes. When will the assassin strike?

We can support the nationalist purposes of these people. We can mediate for them with the Nation of Israel. We can assist all the peoples of this distraught area in attaining a peace which armed strength is helpless to achieve.

AUTHORITY OF FEDERAL OFFICERS AND AGENCIES TO WITHHOLD INFORMATION AND LIMIT THE AVAILABILITY OF RECORDS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

The Senate resumed the consideration of the bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Mr. JOHNSTON of South Carolina. Mr. President, normally, the floor manager for this bill on behalf of the Committee on the Judiciary would be the senior Senator from Missouri [Mr. HENNINGS] who is the sponsor of the bill and also chairman of the Senate Constitutional Rights Subcommittee which held hearings and considered the bill. However, the Senator from Missouri is absent today because of illness. I ask unanimous consent to insert in the RECORD a letter which I have received from him with respect to this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter referred to is as follows:

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
July 30, 1958.

The Honorable OLIN D. JOHNSTON,
United States Senate,
Washington, D. C.

DEAR OLIN: As you know, I find myself unable to be on the Senate floor during the debate on S. 921. I am comforted, however, by the knowledge that your kindness in managing this legislation for me means that it has been delivered to hands both sympathetic and competent.

As a fellow member of the Constitutional Rights Subcommittee you are aware, of course, that I consider S. 921 important to our Nation's needs for a fully informed and enlightened citizenry.

Again let me express my thanks to you for your able assistance in this matter.

With best wishes as always, I am,
Sincerely yours,
THOMAS C. HENNINGS, JR.

Mr. JOHNSTON of South Carolina. Mr. President, I am very sorry that the Senator from Missouri is ill. I know that he has a great interest in this bill and would be present if he were not under doctor's orders. However, it is a pleasure for me to handle the bill in his absence, since I am a member of the Judiciary Committee and the Subcommittee on Constitutional Rights which reported the bill without a dissenting vote.

The PRESIDING OFFICER. The bill is before the Senate and is open to amendment.

Mr. JOHNSTON of South Carolina. Mr. President, the bill now before the Senate, S. 921, would amend section 161 of the Revised Statute with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes—title 5, United States Code, section 22—presently provides:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers, and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it.

The bill proposes to amend this section by adding at the end thereof this single sentence:

This section does not authorize withholding of information from the public or limiting the availability of records to the public.

Mr. President, this bill was introduced in the Senate last year by the senior Senator from Missouri [Mr. HENNINGS] as a means of preventing misuse and miscitation by executive departments and agencies of section 161 of the Revised Statutes (5 U. S. C. 22), known generally as the executive departments' "housekeeping" statute. The Subcommittee on Constitutional Rights, of which I have the privilege of being a member, has been conducting a study of the general subject of freedom of information and secrecy in Government, and it had come to our attention that departmental and agency officials in the executive branch of our Government erroneously had been citing this simple "housekeeping" statute as authority to withhold information from both the public and the Congress.

The bill was referred to the Constitutional Rights Subcommittee, which made a detailed study of its provisions and held public hearings on it earlier this year. At those hearings the subcommittee heard testimony on the bill from a number of witnesses, including the Attorney General of the United States, who presented, in general, the views of the entire executive branch.

The Constitutional Rights Subcommittee favorably reported the bill to the full Committee on the Judiciary, without dissenting vote and without amendment. The Committee on the Judiciary in turn, reported the bill favorably to the Senate,

again without dissenting vote and without amendment.

Mr. President, as I have already indicated, the amendment proposed by this bill is a simple one. Its purpose is to clarify the scope of the authority granted to the heads of executive departments under the "housekeeping" statute, and to make it clear beyond any doubt that this statute in no way authorizes withholding of information from the public or limiting the availability of records to the public.

As the committee report on the bill points out, section 161 has been openly cited in recent years by a number of executive departments and agencies as authority for withholding information from the public, despite the fact that neither the language of the section nor its legislative history indicates any intent on the part of Congress to grant such authority. There seems to be no dispute whatsoever on this point, even from the few persons who have expressed opposition to the bill. The miscitation of section 161 has been so widespread, in fact, that the Constitutional Rights Subcommittee found that some of the independent agencies have cited section 161 as authority to withhold information, even though the statute, by its very terms, is applicable only to executive departments.

The amendment proposed in the bill, by explicitly stating that section 161 does not authorize withholding information or limiting the availability of records, should eliminate, or at least materially curtail, such miscitations of section 161.

Mr. President, at this point I think it is important to mention what the amendment proposed in this bill will not do.

To begin, by its very terms it is limited to section 161 of the Revised Statutes. Accordingly, it applies only to that section and will not amend or repeal any other statutory authority possessed by officers of the executive departments and agencies to withhold information from the public or to limit the availability of records to the public. There are literally scores of such statutes dealing with the control of information—as I understand it, approximately 80—and none of them will be affected by the proposed amendment.

Furthermore, the amendment will not jeopardize the defense security of this country in any way. Nor will it interfere with the proper classification of military secrets. If I thought for a minute it would be harmful to them in any way, I would not be here today speaking in behalf of the bill.

The amendment in no way will affect the confidential status now afforded FBI files. As we all know, those files are now considered confidential, and are safeguarded by other authority. In this connection, perhaps I should point out that during the course of his entire testimony on the pending bill, the Attorney General of the United States, in whose Department the Federal Bureau of Investigation is located, at no time expressed any fear that enactment of the proposed amendment would jeopardize or affect the confidential nature of the FBI files in any way.

Mr. President, another thing the proposed amendment does not do—and indeed cannot do—is affect any executive power flowing from the Constitution. It will not, nor is it intended to, affect what the Attorney General has described as an "Executive privilege" to withhold information from the Congress and the public. Such a privilege if it exists, and to whatever extent it exists, must be derived directly from the Constitution itself. On this basis, the proposed amendment cannot repeal, amend, or impair any such Executive privilege. I should add that in my own opinion neither the proposed amendment nor section 161 of the Revised Statutes has anything to do with any so-called Executive privilege, and the subject actually is extraneous to our consideration of the pending bill. I have mentioned it, however, since during the course of his testimony on the bill before the Constitutional Rights Subcommittee the Attorney General brought it up and expressed a fear that the bill might in some way impair the Executive privilege strongly asserted by him to exist.

Mr. President, I should like to emphasize that the Constitutional Rights Subcommittee, in conjunction with the Special Government Information Subcommittee of the House, has given considerable attention and lengthy study to the precise wording of this bill. The language of the bill has been very carefully chosen and was developed only after several years of intensive study. It has been approved without change by the Constitutional Rights Subcommittee and the full Committee on the Judiciary. Accordingly, I believe that the language of the bill fully reflects the considered judgment of those best acquainted with the problems involved and the bill should be passed without any amendment or change.

Mr. President, this is not an earth-shaking piece of legislation, and it will work no great statutory changes. In fact, its basic purpose is not to make any change in the true meaning of the statute it would amend, but merely to clarify what the Congress meant when it enacted the statute.

However, the fact that this measure is simple and uncomplicated should not mislead us as to its importance. Passage of the bill today will demonstrate that the Members of this body will not sit idly by while its legislative handiwork is twisted or misconstrued so as to improperly deprive the American people of their right to know what their Government is doing. The bill, when passed, will stand as a symbol of our dedication to the protection of that right.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point two letters addressed by the Senator from Missouri [Mr. HENNINGS] to the Senator from Georgia [Mr. RUSSELL] under date of June 23, 1958, and July 3, 1958.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JUNE 23, 1958.

Hon. RICHARD B. RUSSELL,
United States Senator,
Senate Office Building,
Washington, D. C.

DEAR DICK: After talking with you on the floor last Thursday about S. 921 and its relationship to executive department personnel files, it occurred to me that it would be helpful if I were to spell out in some detail in a letter to you just why S. 921 will not affect the present confidential status of such files.

S. 921, as you know, would amend section 161 of the Revised Statutes by adding the sentence, "This section does not authorize the withholding of information from the public or limiting the availability of records to the public." Section 161 then would read:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the Government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. This section does not authorize withholding information from the public or limiting the availability of records to the public."

I have made no comprehensive study to determine exactly what authority is cited by the various executive departments in keeping confidential their personnel files. However, the Constitutional Rights Subcommittee staff has made a broad survey of the authorities cited by the executive departments in withholding information in general, and, aside from section 161 which has been mis-cited from time to time as authority to withhold information, the authorities cited by the departments fall into three general categories. These categories are (1) other statutes, (2) the so-called executive privilege, and (3) executive orders and departmental regulations and orders promulgated under the authority of the Constitution and various specific statutes.

I can state unequivocally that S. 921 will not affect and is not intended to affect the present authority of executive departments under any of these three categories to keep personnel files confidential.

It is clear from the languakge of S. 921 itself that it applies only to section 161 of the Revised Statutes and will not affect any other statute. Accordingly, it will have no effect whatsoever on the operation of the eighty-odd Federal statutes presently restricting disclosure of Government information (a list of which is enclosed). This point is spelled out in detail in the committee report on S. 921, where it is stated, on page 9, "The amendment is not intended nor should it be construed to amend or repeal any other statute which may authorize withholding of information from the public or limiting the availability of records to the public."

In connection with the so-called executive privilege, which, incidentally, frequently has been cited by executive departments and agencies as authority for withholding personnel files from the Congress, neither S. 921 nor section 161, which it seeks to amend, has anything to do with such a "privilege."

Section 161 of the Revised Statutes is a congressional grant of authority to the heads of the executive departments, and has been held by the Supreme Court in the case of *Boske* v. *Commingore* (177 U. S. 459), to be a constitutional exercise of congressional power. Compared to this, the so-called "executive privilege," which the Attorney General says gives the President the right to withhold what he will from the Congress and the public, must be founded

upon the President's powers under the Constitution.

The Attorney General, the chief proponent of the executive privilege concept, originally testified before the Constitutional Rights Subcommittee—and I quote from page 4 of the committee report on S. 921: "This (sec. 161) is a housekeeping statute, which says they keep the records, they hold them physically. It does not relate at all to executive privilege." Later, however, in a letter to the subcommittee the Attorney General expressed the fear that the pending bill, if enacted, might somehow be construed so as to impair the executive privilege.

Frankly, I think such fears are completely groundless. In the first place, since section 161, by the Attorney General's own testimony, is not related to executive privilege, the proposed amendment, by stating what the statute does not do, will not affect any such privilege. The proposed amendment seeks only to narrow the application of section 161, not to expand it.

Secondly, assuming an executive privilege does exist, it is clear that it must be founded on the President's powers under the Constitution. Accordingly, no mere statute such as the one proposed by S. 921 could impair or repeal it. A constitutional amendment would be necessary to do that.

The committee report on S. 921 spells out in great detail the purpose and scope of the bill and states specifically that enactment of the bill will in no way affect, nor is it intended to affect, any so-called executive privilege. On page 6 of that report it is stated:

"In the opinion of the committee, the enactment of the pending bill will in no way affect, nor is it intended to affect, what the Attorney General describes as an executive privilege to withhold information from the Congress and the public.

"To whatever extent such an executive privilege exists, it must be founded on the principle of separation of powers under the Constitution and, accordingly, will not be repealed, amended, or impaired by the proposed amendment to section 161."

This, I believe, adequately insures that S. 921 will not be construed so as to impair any such privilege.

Finally, turning to the third category of authorities cited by the executive departments to justify withholding of information, the amendment to section 161 proposed by S. 921 definitely will not affect existing valid departmental regulations and orders made by the heads of executive departments.

In this connection let me refer to the decision of the Supreme Court in the case of *United States ex rel. Touhy* v. *Ragen* (340 U. S. 462), decided in 1941. In that case, the Court held valid an order of the Attorney General promulgated under section 161 removing from his subordinates and centralizing in his own office the determination of when records in his department should be made available to the judicial branch.

It is not the purpose of S. 921 to affect the decision in *Touhy* v. *Ragen*. Insofar as S. 921 is concerned, the holding in that case would remain the law of the land, since S. 921 goes only to the authority of the department head himself, and seeks to make it clear that section 161 does not authorize executive department heads to withhold information from the public. S. 921 will not interfere with the existing authority of the heads of executive departments to issue reasonable regulations and orders governing the conduct of their subordinates, and will not affect valid regulations and orders now in effect. Existing, valid regulations and orders which now apply to personnel files would remain unchanged and would not be affected by enactment of S. 921, even though promulgated under section 161.

From the foregoing I think it is clear that S. 921 in no way will affect the present confidential status of executive department personnel files. It is my intention during the course of the floor debate on S. 921 to cover the very same points I have made in this letter. With the thought that you may be interested in the precise comments I intend to make on the floor on these points, I am enclosing copies of the statements I have prepared for delivery when S. 921 is considered.

If you have any other questions with regard to this legislation, please let me know.

With my best wishes, as always, I am,

Sincerely yours,

THOMAS C. HENNINGS, Jr.

JULY 3, 1958.

Hon. RICHARD B. RUSSELL,
Senate Office Building,
Washington, D. C.

DEAR DICK: Enclosed is a copy of a letter I have just received from Mr. Harris Ellsworth, Chairman of the Civil Service Commission, regarding the authority relied upon by the Commission to withhold information from the public or limit the availability of records to the public.

I am sending this letter to you since it throws additional light on the point made in my letter to you dated June 23, 1958—i. e., that enactment of S. 921, now pending on the Senate calendar, will not affect the present confidential status of executive department personnel files. Since Mr. Ellsworth states in his letter that the Commission does not rely on section 161 of the Revised Statutes (which S. 921 would amend), and that S. 921 would not affect the Commission, it is obvious that the present confidential status of the multitude of files in the possession of the Commission, including personnel files, would not be affected by the enactment of S. 921.

If you have any other questions about this legislation, I would appreciate your letting me know, since I am anxious to have it brought up for floor action as soon as possible.

With my best wishes, as always, I am,

Sincerely yours,

THOMAS C. HENNINGS, Jr.,
Chairman.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. JOHNSTON of South Carolina. I yield.

Mr. HRUSKA. Mr. President, as a member of the Committee on the Judiciary I voted that the bill be favorably reported, and that it be passed. Nevertheless, some of the language in the committee report and the views of some of the executive departments which are reproduced in the report raise some issues which should be discussed before the Senate votes on the bill. To do so I wish to obtain the views on these issues of the Senator from South Carolina who is the floor manager of the bill on behalf of the committee.

On page 9 of the report there appears a statement of the holding of the Supreme Court in the Touhy case that the head of an executive department is authorized by section 161, the presently existing statute, to prescribe regulations to provide a businesslike control of the records, papers, and property appertaining to his department, and to centralize in his own office the decision as to whether particular official information should be revealed. I have in mind, for example, such orders and regulations as exist in the Department of Justice which forbid subordinates to disclose official information except on the authority of the Attorney General. Such an order enables agents of the Federal Bureau of Investigation to refer any demand for particular official information to the Attorney General for decision as to disclosure. Actually, it was just such an order which the Supreme Court held to be valid in the Touhy case.

As I understand the meaning of the presently existing statute, section 161 is designed to provide a businesslike control of information and papers within an executive department, and for that purpose permits centralization in the head of an executive department of the authority as to the disclosure of official information and papers. That is the meaning which I have gathered from Supreme Court cases such as *Boske* v. *Comingore* (177 U. S. 459) and *Touhy* v. *Ragan* (340 U. S. 462) and from the subcommittee report on S. 921.

The present statute, therefore, allows a subordinate under appropriate regulations or orders to refer any question of disclosure of official information of papers to the head of an executive department for decision, but the presently existing statute itself does not prescribe whether the head of an executive department or a subordinate under his direction shall or shall not disclose information in the official department file. Is this the understanding of the Senator managing the bill as to the true meaning of the present law?

Mr. JOHNSTON of South Carolina. Let me say in response to the question of my distinguished colleague from Nebraska that, as I understand the present law, section 161 is a housekeeping statute by which the head of each of the various executive departments is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it.

In the case of *Boske* v. *Comingore* (177 U. S. 459), the Supreme Court upheld section 161 as a constitutional exercise of congressional power, and held valid a regulation adopted by the Secretary of the Treasury under section 161 by which it was declared that all records in the offices of collectors of internal revenue, or any of their deputies, were in their custody for purposes relating to the collection of the revenues, and that collectors had no control of such records and no discretion with regard to permitting the use of them for any other purpose. The Court held that under section 161 the Secretary could take from a subordinate all discretion as to permitting the records in his custody to be used for any purpose other than the collection of revenue, and reserve such matters for his own determination.

In the case of *Touhy* v. *Ragen* (340 U. S. 462), the Court had before it a Department of Justice order whereby officers and employees of the Department were ordered to decline to produce any official files, documents, records and information in the offices of the Department in response to a subpena duces tecum, unless otherwise expressly di-

rected by the Attorney General. The Court, after stating that it was not determining the ultimate question whether the Attorney General himself might refuse to produce the Government papers in his possession, held the departmental order valid under section 161. The Court cited its decision in Boske against Comingore, and held that the Attorney General could validly withdraw from his subordinates the power to release department papers.

The plain meaning of section 161, as described in the Committee report on S. 921, and as interpreted and applied in Boske against Comingore and Touhy against Ragen, in my opinion represents the true meaning of the present law.

Mr. President, in view of the fact that I have referred to them several times in this discussion, I think it would be appropriate to have the full text of the Supreme Court's opinions in the cases of Boske against Comingore and Touhy against Ragen included as part of this record, and I ask unanimous consent that they be printed at this point in the RECORD. I think they favorably answer the question of the Senator from Nebraska.

There being no objection, the opinions were ordered to be printed in the RECORD, as follows:

BOSKE *v.* COMINGORE—APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY—SUBMITTED JANUARY 8, 1900—DECIDED APRIL 9, 1900

A United States Collector of Internal Revenue was adjudged by a court of limited jurisdiction in Kentucky to be in contempt because he refused, while giving his deposition in a case pending in the State court, to file copies of certain reports made by distillers, and which reports were in his custody as a subordinate officer of the Treasury Department. He based his refusal upon a regulation of that Department which provided: "All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose." This regulation was made by the Secretary of the Treasury under the authority conferred upon him by section 161 of the Revised Statutes of the United States, which authorized that officer, as the head of an executive department of the Government, "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it." The collector having been arrested under the order of the State authorities, sued out a writ of habeas corpus before the District Court of the United States for the Kentucky District. Held:

(1) That the case was properly brought directly from the district court to this court as one involving the construction or application of the Constitution of the United States.

(2) As the petitioner was an officer in the Revenue Service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the State authorities might have interferred with the regular and orderly course of the business of the department to which he belonged, it was proper for the district court to consider the questions raised by the writ of habeas corpus and to discharge the petitioner if held in violation of the Constitution and laws of the United States.

(3) The regulation adopted by the Secretary of the Treasury was authorized by section 161 of the Revised Statutes, and that section was consistent with the Constitution of the United States. To invest the Secretary with authority to prescribe regulations not inconsistent with law for the conduct of the business of his Department and to provide for the custody, use and preservation of the records, papers and property appertaining to it, was a means appropriate and plainly adapted to the successful administration of the affairs of his Department; and it was competent for him to forbid his subordinates to allow the use of official papers in their custody except for the purpose of aiding the collection of the revenues of the United States.

(4) In determining whether the regulation in question was valid, the court proceeded upon the ground that it was not to be deemed invalid unless it was plainly and palpably against law.

The case is stated in the opinion of the court.

Mr. John G. Carlisle, Mr. Henry M. Winslow and Mr. William S. Taylor for appellant.

Mr. Assistant Attorney General Boyd for appellee.

Mr. Justice Harlan delivered the opinion of the court.

This is an appeal from a final order of the District Court of the United States for the District of Kentucky discharging appellee, United States Internal Revenue Collector for the Sixth Collection District in Kentucky, from the custody of the appellant as Sheriff of Kenton County in that Commonwealth.

The discharge was upon the ground that the imprisonment and detention of the appellee were in violation of the Constitution and laws of the United States. That ruling presents the only question to be considered.

Under date of April 15, 1898, the Commissioners of Internal Revenue, with the approval of the Secretary of the Treasury promulgated certain regulations for the government of collectors of internal revenue, as follows:

"All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to subpenas duces tecum or otherwise. Whenever such subpenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. The information contained in the records relating to special-tax payers in the collector's office is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records or of any copies thereof for use against the special-tax payers in cases not arising under the laws of the United States. The giving out of such records or any copies thereof by a collector in such cases is held to be contrary to public policy and not to be permitted. As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them or any copies thereof at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in rule X of the rules and regulations of the Treasury Department, namely: In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy."

These Treasury regulations being in force, a proceeding was instituted in the County Court of Carroll County, Ky.—a court of limited jurisdiction—in the name of the Commonwealth against Elias Block & Sons, for the purpose of ascertaining the amount and value of a large amount of whisky which, it was alleged, the defendants had in their bonded warehouses for a named period, but had not listed for taxation, and of enforcing the assessment and payment of State and county taxes thereon (Kentucky Stat., sec. 4241).

In the progress of that proceeding the Commonwealth of Kentucky, represented by the auditor's agent, took the deposition of Comingore, collector of internal revenue. In answer to questions propounded to him, the collector stated that Block & Sons, owners of a distillery, made monthly reports to his office of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises from 1887 on; that the defendants made application from time to time for permission to withdraw liquors from bond; and that such reports, commencing October 1, 1885, and ending July 1, 1897, were on the files of his office, but not under his control except as collector. He was then asked to file copies of those reports and make them part of his deposition. This he declined to do, under section 3167 of the Revised Statutes of the United States and the rulings of the Department. That section reads: "Section 3167. If any collector or deputy collector, or any inspector or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding $1,000, or to be imprisoned for not exceeding 1 year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government." Being asked what rulings of the Department he referred to other than section 3167 of the Revised Statutes, he said: "The Department does not permit the giving out of anything contained in internal revenue returns or documents by a collector, storekeeper, or any other officer of a collection district for purposes other than those which the statutes of the United States contemplate." That ruling he said was made by the Secretary of the Treasury through the Commissioner of Internal Revenue.

In consequence of the refusal of the collector to file and make part of his deposition copies of the above reports of the defendants, the notary public before whom his deposition was taken adjudged him to be in contempt and ordered him to pay to the Commonwealth a fine of $5 and to be confined in the county jail for 6 hours or until

he was willing to furnish the copies called for or permit access to the records of his office in order that information might be obtained to be used as evidence in the above case.

The matter having been reported by the notary public to the Carroll county court, as required by section 538 of the Kentucky Civil Code of Practice, that court made the following order:

"It is therefore ordered and adjudged by the court that the plaintiff's motions be sustained and that plaintiff is entitled to use as evidence the facts stated in the reports and papers filed by any or all of the defendants in the office of the collector of internal revenue for the sixth district of Kentucky, and also such facts as are stated in the reports made to said office by certain officers known as United States storekeepers, and any other similar records, papers, documents or exemplifications in said office tending to show the amount of liquors on hand at the distillery of the defendants on the 14th day of September, 1889, 1890, 1891, 1893, 1894, 1895, 1896 and on the 15th day of November, 1892; it is further ordered that the witness, D. N. Comingore, make or cause to be made or permit the plaintiff, its agent or attorneys, to make true copies of such of said papers as the plaintiff or its attorneys may demand, and that said Comingore, as collector, attest the same and attach his seal of office thereto, if he has such seal, and that he permit the plaintiff or its agents or attorneys to compare said copies with the originals and verify same, and that he shall also testify further in regard to same, if demand be made, and leave is hereby given to complete the taking of said deposition on giving proper notice, and for this purpose the clerk is directed upon request of plaintiff's attorneys to transmit said deposition as now on file to W. A. Price, notary public, Covington, Ky. It is further adjudged that the action of the notary public, Price, in adjudging the witness, D. N. Comingore, to be in contempt for failure to file copies of reports, papers, documents and exemplifications or to testify as to their contents, as requested, be sustained and affirmed, and that the Commonwealth of Kentucky recover of said D. N. Comingore the sum of $5 as a fine, and that he be taken by the sheriff of Kenton County, Ky., and confined in the jail of said county for the space of 6 hours, or until he signifies his willingness to comply with the request made in the deposition attempted to be taken, as follows: Please file official copies of the reports made to your office by Block & Son as to the amount of liquor which they manufactured and deposited in the bonded warehouses located on their distillery premises from the year 1887 down to the present time, and also official copies of applications made by them to your office during said time for permission to withdraw such liquors from bond. Also with the following request: Please file official copies of such reports of the United States storekeepers as show the liquors on hand at the warehouses on the distillery premises of the defendants in Carroll County on September 15, 1890, September 15, 1891, November 15, 1892, September 15, 1893, 1894, 1895 and 1896."

This action of the county court having been brought to the attention of the collector, he still refused to give the copies called for or to allow access to or inspection of the records of his office for the purposes indicated by the questions propounded to him. He was thereupon again held by the notary public to be in contempt, and, the petition states, that officer adjudged that "the Commonwealth of Kentucky recover of your petitioner the sum of $5 as a fine, and that he be taken by the sheriff or some constable of Kenton County and confined in the jail of said county for the space of 6 hours or until he shall signify his willingness to purge himself of the said contempt and testify and give the information from the records and documents under his control and in his custody as collector of internal revenue of the United States for the Sixth District of Kentucky or allow an inspection of his records for the purpose of obtaining such information for use as evidence in said action of *The Commonwealth of Kentucky* v. *Block et al.*, in said county court," etc.

Having been taken into custody by the sheriff under this order, the collector sued out a writ of habeas corpus and was discharged from custody by the order of the United States District Court for the Kentucky District.

1. In the brief of the Assistant Attorney General some doubt is expressed whether we can take cognizance of this case upon appeal from the district court. Prior to the passage of the act of March 3, 1891, establishing the Circuit Court of Appeals, an appeal from the final judgment of a district court on an application for a writ of habeas corpus by or on behalf of one alleged to be restrained of his liberty in violation of the Constitution or any law of the United States went first to the circuit court (Rev. Stat. sec. 763). But by the above act of 1891 it was provided that appeals or writs of error may be taken from the district courts or from the circuit courts direct to this court in certain cases, among others, "in any case that involves the construction or application of the Constitution of the United States" (26 Stat. 826, 828, c. 517, sec. 5). The present case belongs to that class. The appellee, who was discharged upon habeas corpus, invoked the protection of the Constitution against his being restrained of his liberty by the appellant acting under an order of commitment issued by an inferior State court; and the judgment of the district court proceeded upon the ground that the proceedings against him were inconsistent with the laws of the United States and with the regulations of the Treasury Department legally prescribed under those laws. Throughout, the contention of the appellant has been that the Constitution forbade the giving of the force of law to those regulations adopted by merely executive officers. We think the case is properly here on appeal as one involving the construction and application of the Constitution of the United States.

2. Of the power of the district court to discharge the appellee if he was held in custody in violation of the Constitution of the United States, no doubt can be entertained. It is true that in *Ex parte Royall* (117 U. S. 241, 251), it was said that although a court of the United States had power to discharge one held in custody by State authorities in violation of the Constitution of the United States, it was not bound to interpose immediately upon application being made for the writ, but should exercise the discretion with which it was invested "in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution." Hence, the general rule that the courts of the United States should not interfere by habeas corpus with the custody by State authorities of one claiming to be held in violation of the Constitution or laws of the United States, until after final action by the State courts in the case in which such custody exists. Ex parte Royall, above cited; *New York* v. *Eno* (155 U. S. 89), and authorities there cited; *Whitten* v. *Tomlinson* (160 U. S. 231), and authorities there cited. But to this general rule there are exceptions which are thus indicated in Ex parte Royall: "When the petitioner is in custody by State authority for an act done or omitted to be done in pursuance of a law of the United States, or of an order, proccess, or decree of a court or judge thereof; or where, being a subject or citizen of a foreign state, and domiciled therein, he is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under State authority."

The present case was one of urgency, in that the appellee was an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the State authorities might have interfered with the regular and orderly course of the business of the Department to which he belonged. The district court therefore did not err in determining the question of constitutional law raised by the application for a writ of habeas corpus, and rendering final judgment.

3. We come then to inquire whether the imprisonment of the appellee was in violation of the Constitution or laws of the United States. This question was fully examined in the elaborate and able opinion of Judge Evans, of the district court (96 Fed. Rep. 552).

The commitment of the appellee was because of a refusal to file with his deposition copies of certain reports made to him by Block & Sons, distillers, of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises during a specified period. Manifestly, he could not have filed the copies called for without violating regulations formally promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. If these regulations were such as the Secretary could legally prescribe, then, it must be conceded, the State authorities were without jurisdiction to compel the collector to violate them.

The Commissioner of Internal Revenue is an officer in the Department of the Treasury (Rev. Stat. sec. 319). And the Secretary of the Treasury, as the head of an executive department of the Government, was authorized "to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it" (Rev. Stat. sec. 161).

Now, the reports or copies of reports in the possession of the collector—for not producing copies of which he was adjudged to be imprisoned—were records and papers appertaining to the business of the Treasury Department and belonging to the United States. The Secretary was authorized by statute to make regulations, not inconsistent with law, for the custody, use, and preservation of such records, papers, and property. The Constitution gives Congress power to make all laws necessary and proper for carrying into execution the powers vested by that instrument in the Government of the United States or in any Department or officer thereof (Const. art. 1, sec. 8). That power was exerted by Congress when it authorized the Secretary of the Treasury to provide by regulations not inconsistent with law for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its busi-

ness, and the custody, use, and preservation of the records, papers, and property appertaining to it. The regulations in question may not have been absolutely or indispensably necessary to accomplish the objects indicated by the statute. But that is not the test to be applied when we are determining whether an act of Congress transcends the powers conferred upon it by the Constitution. Congress has a large discretion as to the means to be employed in the execution of a power conferred upon it, and is not restricted to "those alone without which the power would be nugatory;" for, "all means which are appropriate, which are plainly adapted" to the end authorized to be attained, "which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." *McCulloch* v. *Maryland* (4 Wheat. 316, 415, 421, 423). In the more recent case of *Logan* v. *United States* (144 U. S. 263, 283, 293), this court, referring to the above constitutional provision, said that "in the exercise of this general power of legislation, Congress may use any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution." Again: "Every right created by, arising under or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object."

Can it be said that to invest the Secretary of the Treasury with authority to prescribe regulations not inconsistent with law for the conduct of the business of his Department, and to provide for the custody, use, and preservation of the records, papers, and property appertaining to it, was not a means appropriate and plainly adapted to the successful administration of the affairs of that Department? Manifestly not. The bare statement of the proposition suggests this conclusion, and extended argument to support it is unnecessary.

This brings us to the question whether it was inconsistent with law for the Secretary to adopt a regulation declaring that all records in the offices of collectors of internal revenue, or any of their deputies, are in their custody and control "for purposes relating to the collection of the revenues of the United States only," and that collectors "have no control of them, and no discretion with regard to permitting the use of them for any other purpose."

There is certainly no statute which expressly or by necessary implication forbade the adoption of such a regulation. This being the case, we do not perceive upon what ground the regulation in question can be regarded as inconsistent with law, unless it be that the records and papers in the office of a collector of internal revenue are at all times open of right to inspection and examination by the public, despite the wishes of the Department. That cannot be admitted. The papers in question, copies of which were sought from the appellee, were the property of the United States, and were in his official custody under a regulation forbidding him to permit their use except for purposes relating to the collection of the revenues of the United States. Reasons of public policy may well have suggested the necessity, in the interest of the Government, of not allowing access to the records in the offices of collectors of internal revenue, except as might be directed by the Secretary of the Treasury. The interests of persons compelled, under the revenue laws, to furnish information as to their private business affairs would often be seriously affected if the disclosures so made were not properly guarded. Besides, great confusion might arise in the business of the Department if the Secretary allowed the use of records and papers in the custody of collectors to depend upon the discretion or judgment of subordinates. At any rate, the Secretary deemed the regulation in question a wise and proper one, and we cannot perceive that his action was beyond the authority conferred upon him by Congress. In determining whether the regulations promulgated by him are consistent with law, we must apply the rule of decision which controls when an act of Congress is assailed as not being within the powers conferred upon it by the Constitution; that is to say, a regulation adopted under section 161 of the Revised Statutes should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress.

In our opinion the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property appertaining to the business of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character.

The judgment of the district court is affirmed.

UNITED STATES EX REL. TOUHY *v.* RAGEN, WARDEN, ET AL.—CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT—No. 83—ARGUED NOVEMBER 27–28, 1950—DECIDED FEBRUARY 26, 1951

1. Pursuant to Department of Justice Order No. 3229, issued by the Attorney General under title 5, United States Code, section 22, a subordinate official of the Department of Justice refused, in a habeas corpus proceeding by a State prisoner, to obey a subpena duces tecum requiring him to produce papers of the Department in his possession. Held: Order No. 3229 is valid and the subordinate official properly refused to produce the papers. Pages 463–468.

2. The trial court not having questioned the subordinate official on his willingness to submit the material to the court for determination as to its materiality to the case and whether it should be disclosed, the issue of how far the Attorney General could or did waive any claimed privilege against disclosure is here immaterial. Page 468.

3. Order No. 3229 was a valid exercise by the Attorney General of his authority under title 5, United States Code, section 22, to prescribe regulations not inconsistent with law for the custody, use, and preservation of the records, papers, and property appertaining to the Department of Justice. *Boske* v. *Comingore* (177 U. S. 459), pages 468–470. 180 F. 2d 321, affirmed.

In a habeas corpus proceeding by a State prisoner, the district court adjudged a subordinate official of the Department of Justice guilty of contempt for refusal to produce papers required by a subpena duces tecum. The court of appeals reversed (180 F. 2d 321). This court granted certiorari (340 U. S. 806). Affirmed, page 470.

Robert B. Johnstone argued the cause for petitioner. With him on the brief were Edward M. Burke and Howard B. Bryant.

Robert S. Erdahl argued the cause for McSwain, respondent. With him on the brief were Solicitor General Perlman, Assistant Attorney General McInerney, Stanley M. Silverberg and Philip R. Monahan.

Mr. Justice Reed delivered the opinion of the Court.

This proceeding brings here the question of the right of a subordinate official of the Department of Justice of the United States to refuse to obey a subpena duces tecum ordering production of papers of the Department in his possession. The refusal was based upon a regulation [1] issued by the At-

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[1] Department of Justice Order No. 3229, filed May 2, 1946, vol. 11, Federal Register, p. 4920, reads:

"Pursuant to authority vested in me by Rev. Stat. 161, United States Code, title 5, section 22, it is hereby ordered:

"All official files, documents, records and information in the offices of the Department of Justice, including the several offices of United States attorneys, Federal Bureau of Investigation, United States marshals, and Federal penal and correctional institutions, or in the custody or control of any officer or employee of the Department of Justice, are to be regarded as confidential. No officer or employee may permit the disclosure or use of the same for any purpose other than for the performance of his official duties, except in the discretion of the Attorney General, The assistant to the Attorney General, or an assistant Attorney General acting for him.

"Whenever a subpena duces tecum is served to produce any of such files, documents, records or information, the officer or employee on whom such subpena is served, unless otherwise expressly directed by the Attorney General, will appear in court in answer thereto and respectfully decline to produce the records specified therein, on the ground that the disclosure of such records is prohibited by this regulation."

Supplement No. 2 to that order, dated June 6, 1947, provides in part:

"*To all United States attorneys:*

"PROCEDURE TO BE FOLLOWED UPON RECEIVING A SUBPENA DUCES TECUM

"Whenever an officer or employee of the Department is served with a subpena duces tecum to produce any official files, documents, records or information he should at once inform his superior officer of the requirement of the subpena and ask for instructions from the Attorney General. If, in the opinion of the Attorney General, circumstances or conditions make it necessary to decline in the interest of public policy to furnish the information, the officer or employee on whom the subpena is served will appear in court in answer thereto and courteously state to the court that he has consulted the Department of Justice and is acting in accordance with instructions of the Attorney General in refusing to produce the records.

* * * * *

"It is not necessary to bring the required documents into the courtroom and on the witness stand when it is the intention of the officer or employee to comply with the subpena by submitting the regulation of the Department (Order No. 3229) and explaining that he is not permitted to show the files. If questioned, the officer or employee should state that the material is at hand and can be submitted to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed. The records should be kept in the United States attorney's office or some similar place of safekeeping near the courtroom. Under no circumstances should the name of any confidential informant be divulged."

torney General under title 5 United States Code, section 22.[2]

Petitioner, Roger Touhy, an inmate of the Illinois State penitentiary, instituted a habeas corpus proceeding in the United States District Court for the Northern District of Illinois against the warden, alleging he was restrained in violation of the due process clause of the Federal Constitution. In the course of that proceeding a subpena duces tecum was issued and served upon George R. McSwain, the agent in charge of the Federal Bureau of Investigation at Chicago, requiring the production of certain records which, petitioner Touhy claims, contained evidence establishing that his conviction was brought about by fraud.[3] At the hearing that considered the duty of submission of the subpenaed papers, the United States Attorney made representations to the court and to opposing counsel as to how far the Attorney General was willing for his subordinates to go in the production of the subpenaed papers. The suggestions were not accepted. Mr. McSwain was then placed upon the witness stand and ordered to bring in the papers. He personally declined to produce the records in these words:

"I must respectfully advise the Court that under instructions to me by the Attorney General that I must respectfully decline to produce them, in accordance with Department Rule No. 3229." [4]

Thereupon, the judge found Mr. McSwain guilty of contempt of court in refusing to produce the records referred to in the subpena and sentenced him to be committed to the custody of the Attorney General of the United States or his authorized representative until he obeyed the order of the court or was discharged by due process of law.

On appeal, the Court of Appeals reversed on the ground that Department of Justice Order No. 3229 was authorized by the statute and "confers upon the Department of Justice the privilege of refusing to produce unless there has been a waiver of such privilege" (180 F. 2d 321 at 327).

The court then considered whether or not the privilege of nondisclosure was waived. It quoted from supplement No. 2 to order No. 3229 this language:

"If questioned, the officer or employee should state that the material is at hand and can be submitted to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed. The records should be kept in the United States Attorney's office or some similar place of safekeeping near the courtroom. Under no circumstances should the name of any confidential informant be divulged" (180 F. 2d at 328).

The Court of Appeals said that "this language contemplates some circumstances when the material called for must be submitted 'to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed.'" The court found, however, that no such limited disclosure was requested but that Mr. McSwain was called upon "to produce all documents and material called for in the subpena without limitation and that at no time was he questioned" as to his willingness to submit the papers for determination as to materiality and best public interests. Consequently, he was not guilty of contempt unless the law required the witness to make unlimited production. The court thought that, since this last would mean there was no privilege in the Department to refuse production, such a holding should not be made. It said:

"Submission could only have been required to the extent the privilege had been waived by the Attorney General and for the purpose and in the specific manner designated" (180 F. 2d at 328).

We granted certiorari, title 340, United States Code, page 806, to determine the validity of the Department of Justice Order No. 3229. Among the questions duly presented by the petition for certiorari was whether it is permissible for the Attorney General to make a conclusive determination not to produce records and whether his subordinates in accordance with the order may lawfully decline to produce them in response to a subpena duces tecum.

We find it unnecessary, however, to consider the ultimate reach of the authority of the Attorney General to refuse to produce at a court's order the Government papers in his possession, for the case as we understand it raises no question as to the power of the Attorney General himself to make such a refusal. The Attorney General was not before the trial court. It is true that his subordinate, Mr. McSwain, acted in accordance with the Attorney General's instructions and a department order. But we limit our examination to what this record shows, to wit, a refusal by a subordinate of the Department of Justice to submit papers to the court in response to its subpena duces tecum on the ground that the subordinate is prohibited from making such submission by his superior through order No. 3229.[5] The validity of the superior's action is in issue only insofar as we must determine whether the Attorney General can validly withdraw from his subordinates the power to release department papers. Nor are we here concerned with the effect of a refusal to poduce in a prosecution by the United States [6] or with the right of a custodian of Government papers to refuse to produce them on the ground that they are state secrets [7] or that they would disclose the names of informants.[8]

We think that order No. 3229 is valid and that Mr. McSwain in this case properly refused to produce these papers. We agree with the conclusion of the court of appeals that since Mr. McSwain was not questioned on his willingness to submit the material "to the court for determination as to its materiality to the case," and whether it should be disclosed, the issue of how far the Attorney General could or did waive any claimed privilege against disclosure is not material in this case.

Department of Justice order No. 3229, note 1, supra, was promulgated under the authority of title 5, United States Code, section 22. That statute appears in its present form in Revised Statutes section 161, and consolidates several older statutes relating to individual departments. See, for example, 16th Statutes at Large, page 163. When one considers the variety of information contained in the files of any Government department and the possibilities of harm from unrestricted disclosure in court, the usefulness, indeed the necessity, of centralizing determination as to whether subpenas duces tecum will be willingly obeyed or challenged is obvious. Hence it was appropriate for the Attorney General, pursuant to the authority given him by title 5, United States Code, section 22, to prescribe regulations not inconsistent with law for "the custody, use, and preservation of the records, papers, and property appertaining to" the Department of Justice, to promulgate order 3229.

Petitioner challenges the validity of the issue of the order under a legal doctrine which makes the head of a department rather than a court the determinator of the admissibility of evidence. In support of his argument that the Executive should not invade the judicial sphere, petitioner cites Wigmore, Evidence (3d ed.), section 2379, and *Marbury* v. *Madison* (1 Cranch 137). But under this record we are concerned only with the validity of order No. 3229. The constitutionality of the Attorney General's exercise of a determinative power as to whether or on what conditions or subject to what disadvantages to the Government he may refuse to produce Government papers under his charge must await a factual situation that requires a ruling.[9] We think order No. 3229 is consistent with law. This case is ruled by *Boske* v. *Comingore* (177 U. S. 459).[10]

That case concerned a collector of internal revenue adjudged in contempt for failing to file with his deposition copies of a distiller's reports in his possession as a subordinate officer of the Treasury. The information was needed in litigation in a State court to collect a State tax. The regulation upon which the collector relied for his refusal was of the same general character as Order No. 3229.[11] After referring to the con-

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[2] "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

[3] The subpena was also addressed to the Attorney General. There is no contention, however, that the Attorney General was personally served with the subpena; nor did he appear. See Fed. Rules Civ. Proc., 45.

[4] We take this answer to refer to both the original Department of Justice Order No. 3229 and the supplement.

[5] Although in this record there are indications that the United States attorney was willing to submit the papers to the judge alone for his determination as to their materiality, the judge refused to accept the papers for examination on that basis. There is also in the record indication that the United States attorney thought of submitting the papers to the court and opposing counsel in chambers but changed his mind. For our conclusion none of these facts are material, as the final order adjudging Mr. McSwain guilty of contempt was based, as above indicated, on a refusal by Mr. McSwain to produce, as instructed by the Attorney General in accordance with Department Order No. 3229.

[6] *Cf. United States* v. *Andolschek* (142 F. 2d 503).

[7] See Wigmore, Evidence (3d ed.), sec. 2378.

[8] See Wigmore, Evidence (3d ed.), sec. 2374.

[9] *Rescue Army* v. *Municipal Court of Los Angeles* (331 U. S. 549). For relatively recent consideration of the problem underlying governmental privilege against producing evidence, compare *Duncan* v. *Cammell, Laird & Co.* (1942) A. C. 624, with *Robinson* v. *State of South Australia* (1931) A. C. 704.

[10] That case has been generally followed. See, e. g., *Ex parte Sackett* (74 F. 2d 922); In re Valecia Condensed Milk Co. (240 F. 310); *Harwood* v. *McMurtry* (22 F. Supp. 572); *Stegall* v. *Thurman* (175 F. 813); *Walling* v. *Comet Carriers, Inc.* (3 F. R. D. 442, 443).

[11] The following excerpts will show the similarity:

" 'Whenever such subpenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. * * * In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to

stitutional authority for the enactment of Revised Statute section 161, the basis, as title 5 United States Code, section 22, for the regulation now under consideration, this Court reached the question of whether the regulation centralizing in the Secretary of the Treasury the discretion to submit records voluntarily to the courts was inconsistent with law, page 469. It concluded that the Secretary's reservation for his own determination of all matters of that character was lawful.

We see no material distinction between that case and this.

The judgment of the court of appeals is affirmed.

Mr. Justice Black and Mr. Justice Douglas are of the opinion the judgment of the district court should be affirmed.

Mr. Justice Clark took no part in the consideration or decision of this case.

Mr. Justice Frankfurter, concurring.

Issues of far-reaching importance that the Government deemed to be involved in this case are now expressly left undecided. But they are questions that lie near the judicial horizon. To avoid future misunderstanding, I deem it important to state my understanding of the opinion of the Court—what it decided and what it leaves wholly open—on the basis of which I concur in it.

"This case," the Court holds, "is ruled" by *Boske* v. *Comingore* (177 U. S. 459). I agree. *Boske* v. *Comingore* decided that the Secretary of the Treasury was authorized, as a matter of internal administration in his Department, to require that his subordinates decline to produce Treasury records in their possession. In the case before us, production of documents belonging to the Department of Justice was declined by virtue of an order of the Attorney General instructing his subordinates not to produce certain documents. The authority of the Attorney General to make such a regulation for the internal conduct of the Department of Justice is not less than the power of the Secretary of the Treasury to promulgate the order upheld in *Boske* v. *Comingore*, supra.

But in holding that that decision rules this, the context of the earlier decision and the qualifications which that context implies become important. The regulation in *Boske* v. *Comingore* provided: (1) That collectors should under no circumstances disclose tax reports or produce them in court, and (2) that reports could be obtained only "on a rule of the court upon the Secretary of the Treasury" (177 U. S. at 460–461). The regulation also stated that the reports would be disclosed by the Secretary of the Treasury "unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy." Ibid. This portion of the regulation was not in issue, however, for the Court was considering the failure of the collector to produce, not the failure of the Secretary of the Treasury. This is emphasized by the Government's suggestion that:

"[I]f the reports themselves were to be used this could be secured by a subpena duces tecum to the head of the Treasury Department or someone under his direction, who would produce the original papers themselves in court for introduction as evidence in the trial of the cause." Brief for Appellee, page 49, *Boske* v. *Comingore, supra.*

And the decision was strictly confined to the narrow issue before the Court. It is epitomized in the concluding paragraph of the Boske opinion:

"In our opinion the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property appertaining to the business of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character." (177 U. S. at 470).

There is not a hint in the Boske opinion that the Government can shut off an appropriate judicial demand for such papers.

I wholly agree with what is now decided insofar as it finds that whether, when, and how the Attorney General himself can be granted an immunity from the duty to disclose information contained in documents within his possession that are relevant to a judicial proceeding are matters not here for adjudication. Therefore, not one of these questions is impliedly affected by the very narrow ruling on which the present decision rests. Specifically, the decision and opinion in this case cannot afford a basis for a future suggestion that the Attorney General can forbid every subordinate who is capable of being served by process from producing relevant documents and later contest a requirement upon him to produce on the ground that procedurally he cannot be reached. In joining the Court's opinion I assume the contrary—that the Attorney General can be reached by legal process.

Though he may be so reached, what disclosures he may be compelled to make is another matter. It will of course be open to him to raise those issues of privilege from testimonial compulsion which the Court rightly holds are not before us now. But unless the Attorney General's amenability to process is impliedly recognized we should candidly face the issue of the immunity pertaining to the information which is here sought. To hold now that the Attorney General is empowered to forbid his subordinates, though within a court's jurisdiction, to produce documents and to hold later that the Attorney General himself cannot in any event be procedurally reached would be to apply a fox-hunting theory of justice that ought to make Bentham's skeleton rattle.

Mr. HRUSKA. I thank the Senator from South Carolina for his helpful answer. It will clear up the point in the legislative history and will be helpful later. I should like to ask a further question.

Would it follow, from what I have just stated, that after the proposed amendment is passed, the authority of the head of an executive department based on section 161 to centralize control of information in himself by appropriate orders and regulations would not be changed from what it is now? I refer to authority under section 161 to centralize responsibility, not to authority to disclose or withhold.

Mr. JOHNSTON of South Carolina. In answer to the question of the distinguished Senator from Nebraska, I would like to quote the words of Dr. Harold L. Cross, special counsel in freedom of information matters for the American Society of Newspaper Editors, when he testified on February 7, 1958, before a subcommittee of the House Government Operations Committee in connection with H. R. 2767, the companion bill in the House of Representatives identical to S. 921. When asked how *Boske* v. *Comingore* and *Touhy* v. *Ragen* would be affected by the amendment to section 161 proposed by the bill, Dr. Cross stated:

> Those two cases held, only, that under title 5, United States Code, section 22, the head of 1 of the 10 executive departments in a manner not inconsistent with law might, by regulation, centralize in himself the decision whether or not voluntarily to make a record public, thereby removing that determination from the subordinates in the department.
>
> Those decisions, which, in my opinion, correctly interpret title 5, United States Code, section 22, would not be affected at all by the amendment. They would remain the law of the land.

I fully subscribe to this view, and I quote Dr. Cross now because he stated so clearly and precisely what was in the mind of the senior Senator from Missouri [Mr. HENNINGS] when he introduced the pending bill in the Senate last year.

Mr. HRUSKA. If the Senator will further yield, I should like to ask him to comment concerning a statement on page 1 of the committee report on the bill, as follows:

> The purpose of the bill is to clarify the scope of the authority granted to the heads of the executive departments under section 161 of the Revised Statutes and to make it clear beyond any doubt that this statute in no way authorizes withholding of information from the public or limiting the availability of records to the public.

The words "in no way" in that statement may be susceptible to various interpretations. For example—

In the next to the last paragraph in the report of the Post Office Department on the bill, which is reproduced on page 10 of the committee report, that Department expressed the view that—

> If the law is amended as proposed by these bills, we believe it will prohibit the Postmaster General from instructing his employees that they may not release to the public certain information.

Does the Senator agree that the amendment to section 161 of the Revised Statutes which would be made by the bill would not prohibit the Postmaster General, as the head of an executive department and the heads of other executive departments, from prescribing regulations instructing their respective employees to refer requests for certain information to the head of the Department for decision?

Mr. JOHNSTON of South Carolina. As I understand the question, I think that what my colleague from Nebraska has just asked about is covered by what was said before concerning the effect of the proposed amendment on the decision in *Boske* v. *Comingore* and *Touhy* v. *Ragen*. To whatever extent section 161 now authorizes the Postmaster General or the head of any of the other executive departments to prescribe regulations instructing his employees to refer requests for certain information to him for decision, such authority will remain unchanged by the proposed amendment.

Mr. HRUSKA. Does the Senator agree that in the statement of the purpose of the bill in the committee report the words "in no way" are applicable only to the officers who are referred to

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the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy'" (177 U. S. 461).

in section 161, the head of each executive department?

Mr. JOHNSTON of South Carolina. I think I can answer that question best by saying that the phrase "in no way" is applicable to everyone, including the head of each executive department, who attempts to cite section 161 itself as authority to withhold information or limit the availability of records.

Mr. HRUSKA. However, if a subordinote cited section 161 as amended, plus a directive from the head of his Department that he refer requests for information, would that not constitute authority for such subordinate to withhold?

Mr. JOHNSTON of South Carolina. Assuming the directive was a valid directive, promulgated by the head of the executive department under section 161, then under the holding in the Touhy against Ragen case, that directive would constitute good authority for the subordinate to refer a request for information to the department head.

Mr. HRUSKA. Is it not true that section 161, either with or without the amendment in S. 921, applies only to heads of the 10 executive departments—in popular language, the "Cabinet" departments—and does not apply to the head of any independent agency?

Mr. JOHNSTON of South Carolina. Yes; my distinguished colleague from Nebraska is absolutely correct. Section 161 applies only to the heads of the executive departments.

I might say, on this point, that the Constitutional Rights Subcommittee has found that despite the fact that section 161 by its very terms applies only to the heads of the executive departments, several of the so-called independent agencies actually have cited it as authority to withhold information. In other words, not only has section 161 been miscited for the wrong purpose, but it also has been miscited by the wrong persons.

Mr. HRUSKA. There may be a question as to whether the amendment, providing that section 161 does not authorize withholding of information from the public or limiting the availability of records to the public, would permit the head of an executive department to prescribe regulations that requests for official information or that official records be made available must be presented during the regular hours of business of that department, to certain employees in certain offices, and so on.

Does the Senator agree that the amendment which S. 921 would make to section 161 does not prohibit the head of an executive department from prescribing reasonable housekeeping regulations as to the time, place, and method of presentation of any request for information from the books, records, and property appertaining to his department?

Mr. JOHNSTON of South Carolina. In general, I agree with what the distinguished Senator from Nebraska has said. It is not contemplated that the amendments which S. 921 would make to section 161, would prevent the head of an executive department from prescribing reasonable "housekeeping" regulations as to the time, place, and method of presentation of requests for information. For example, at the moment I can visualize no reason why under this amendment the head of an executive department could not validly issue a regulation, not inconsistent with law, setting forth that various official records were to be available for public inspection only during the regular hours of business of that department. As long as the regulation was reasonable and fair under the particular circumstances, I think such a regulation would be valid under section 161 as it is written today and as it would be amended by S. 921.

Mr. HRUSKA. In April 1941 the Chairman of the House Committee on Naval Affairs requested that this committee be furnished with certain FBI investigative reports respecting industrial establishments which had naval contracts. In a letter to the Committee Chairman Attorney General Jackson advised him that it is the position of the Department of Justice, restated now with the approval and at the direction of the President, then Franklin D. Roosevelt, that all investigative reports are confidential documents of the executive branch and that congressional or public access thereto would not be in the public interest. This letter is reproduced in 40 Opinions of Attorneys General 45 (1941).

Does the Senator agree that in the absence of a statute making such reports confidential any authority of the executive branch to withhold such reports from congressional or public inspection must be found in the Constitution?

Mr. JOHNSTON of South Carolina. The question raised by the Senator from Nebraska is a very interesting one, and can best be dealt with now, I suggest, by referring to the committee report on S. 921.

On page 6 of that report, under the heading, "Will Not Affect Executive Privilege," it is stated:

> In the opinion of the committee, the enactment of the pending bill will in no way affect, nor is it intended to affect, what the Attorney General describes as an executive privilege to withhold information from the Congress and the public. To whatever extent such an executive privilege exists, it must be founded on the principle of separation of powers under the Constitution and, accordingly, will not be repealed, amended, or impaired by the proposed amendment to section 161.

From this language in the committee report it is clear that the committee in no way deemed it necessary to pass on the question whether there exists an executive privilege flowing from the Constitution, or to what extent such a privilege might exist. This question actually is extraneous both to the subject matter of the report and to our consideration of the bill. As the present Attorney General testified when he appeared before the Constitutional Rights Subcommittee in connection with this bill, and I quote from page 4 of the committee report:

> This (sec. 161) is a housekeeping statute, which says they keep the records, they hold them physically. It doesn't relate at all to executive privilege.

In this instance, I agree with the Attorney General. Neither section 161 nor the pending bill have any relation at all to any executive privilege. Accordingly, I do not think it is necessary or appropriate in our consideration of the present bill to attempt to answer the various questions raised from time to time about the so-called executive privilege and the powers of the executive branch under the Constitution to withhold information from the Congress or the public. I think it is sufficient that in the committee report it is stated unequivocally that the amendment to the housekeeping statute proposed in the pending bill in no way will impair any executive privilege or executive order or power flowing from the Constitution.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement of "Position of the Executive Department Regarding Investigative Reports," dated April 30, 1941, addressed to Hon. CARL VINSON, chairman, House Committee on Naval Affairs, and signed by Robert H. Jackson, then Attorney General of the United States.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

POSITION OF THE EXECUTIVE DEPARTMENT REGARDING INVESTIGATIVE REPORTS

It is the position of the Department of Justice, restated now with the approval and at the direction of the President, that all investigative reports are confidential documents of the executive department and that congressional or public access thereto would not be in the public interest.

This accords with the conclusions reached by a long line of predecessors in the office of Attorney General and with the position taken by the President from time to time since Washington's administration; and this discretion in the executive branch has been upheld and respected by the judiciary.

APRIL 30, 1941.

Hon. CARL VINSON,
Chairman, House Committee on Naval Affairs.

MY DEAR MR. VINSON: I have your letter of April 23, requesting that your committee be furnished with all Federal Bureau of Investigation reports since June 1939, together with all future reports, memorandums, and correspondence of the Federal Bureau of Investigation, or the Department of Justice, in connection with "investigations made by the Department of Justice arising out of strikes, subversive activities in connection with labor disputes, or labor disturbances of any kind in industrial establishments which have naval contracts, either as prime contractors or subcontractors."

Your request to be furnished reports of the Federal Bureau of Investigation is one of the many made by congressional committees. I have on my desk at this time two other such requests for access to Federal Bureau of Investigation files. The number of these requests would alone make compliance impracticable, particularly where the requests are of so comprehensive a character as those contained in your letter. In view of the increasing frequency of these requests, I desire to restate our policy at some length, together with the reasons which require it.

It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to take care that

the laws be faithfully executed, and that congressional or public access to them would not be in the public interest.

Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

Disclosure of the reports at this particular time would also prejudice the national defense and be of aid and comfort to the very subversive elements against which you wish to protect the country. For this reason we have made extraordinary efforts to see that the results of counterespionage activities and intelligence activities of this Department involving those elements are kept within the fewest possible hands. A catalog of persons under investigation or suspicion, and what we know about them, would be of inestimable service to foreign agencies; and information which could be so used cannot be too closely guarded.

Moreover, disclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation. As you probably know, much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants—sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency.

Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people. Even though later and more complete reports exonerate the individuals, the use of particular or selected reports might constitute the grossest injustice, and we all know that a correction never catches up with an accusation.

In concluding that the public interest does not permit general access to Federal Bureau of Investigation reports for information by the many congressional committees who from time to time ask it, I am following the conclusions reached by a long line of distinguished predecessors in this office who have uniformly taken the same view. Examples of this are to be found in the following letters, among others:

Letter of Attorney General Knox to the Speaker of the House, dated April 27, 1904, declining to comply with a resolution of the House requesting the Attorney General to furnish the House with all papers and documents and other information concerning the investigation of the Northern Securities case.

Letter of Attorney General Bonaparte to the Speaker of the House, dated April 13, 1908, declining to comply with a resolution of the House requesting the Attorney General to furnish to the House information concerning the investigation of certain corporations engaged in the manufacture of wood pulp or print paper.

Letter of Attorney General Wickersham to the Speaker of the House, dated March 18, 1912, declining to comply with a resolution of the House directing the Attorney General to furnish to the House information concerning an investigation of the smelter trust.

Letter of Attorney General McReynolds to the Secretary to the President, dated August 28, 1914, stating that it would be incompatible with the public interest to send to the Senate in response to its resolution, reports made to the Attorney General by his associates regarding violations of law by the Standard Oil Co.

Letter of Attorney General Gregory to the President of the Senate, dated February 23, 1915, declining to comply with a resolution of the Senate requesting the Attorney General to report to the Senate his findings and conclusions in the investigation of the smelting industry.

Letter of Attorney General Sargent to the chairman of the House Judiciary Committee, dated June 8, 1926, declining to comply with his request to turn over to the committee all papers in the files of the Department relating to the merger of certain oil companies.

In taking this position my predecessors in this office have followed eminent examples.

Since the beginning of the Government the executive branch has from time to time been confronted with the unpleasant duty of declining to furnish to the Congress and to the courts information which it has acquired and which is necessary to it in the administration of statutes. As early as 1796 the House of Representatives requested President Washington to lay before the House a copy of the instructions to ministers of the United States who negotiated a treaty with Great Britain, together with the correspondence and other documents relating to that treaty. In declining to comply with the request, President Washington said:

"As it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office * * * forbids a compliance with your request." (See Richardson, Messages and Papers of the Presidents, v. 1, pp. 194, 196.)

In 1825 the House of Representatives requested President Monroe to transmit certain documents relating to the conduct of the officers of the Navy of the United States on the Pacific Ocean, and of other public agents in South America. In his reply, President Monroe refused to comply with the request, stating that to do so might subject individuals to unjust criticism; that the individuals involved should not be censured without just cause, which could not be ascertained until after a thorough and impartial investigation of their conduct; and that under those circumstances it was thought that communication of the documents would not comport with the public interest nor with what was due to the parties concerned. (See Richardson, Messages and Papers of the Presidents, v. 2, p. 278.)

In 1833, the Senate requested President Jackson to communicate to that body a copy of a paper purporting to have been read by him to the heads of the executive departments, dated September 18, 1833, relating to the removal of the deposits of the public money from the Bank of the United States. President Jackson declined. (See Richardson, Messages and Papers of the Presidents, v. 3, p. 36.)

In 1835 the Senate passed a resolution requesting President Jackson to communicate copies of the charges, if any, which might have been made to him against the official conduct of Gideon Fitz, late surveyor general south of the State of Tennessee, which caused his removal from office. In reply President Jackson again declined to comply. (See Richardson, Messages and Papers of the Presidents, v. 3, pp. 132, 133.)

This discretion in the executive branch has been upheld and respected by the judiciary. The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine. *Marbury* v. *Madison* (1 Cranch 137, 169); *Totten* v. *United States* (92 U. S. 105); *Kilbourn* v. *Thompson* (103 U. S. 168, 190); *Vogel* v. *Gruaz* (110 U. S. 311); *In re Quarles and Butler* (158 U. S. 532); *Bosk* v. *Comingore* (177 U. S. 459); *In re Huttman* (70 Fed. 699); *In re Lamberton* (124 Fed. 466); *In re Valecia Condensed Milk Co.* (240 Fed. 310); *Elrod* v. *Moss* (278 Fed. 123); *Arnstein* v. *United States* (296 Fed. 946); *Gray* v. *Pentland* (2 Sergeant & Rawle's (Pa.), 23, 28; *Thompson* v. *German Valley R. Co.* (22 N. J. Equity 111); *Worthington* v. *Scribner* (109 Mass. 487); *Appeal of Hartranft* (85 Pa. 433, 445; 2 *Burr Trials*, 533–536; see also 25 Op. A. G. 326).

In *Kilbourn* v. *Thompson*, supra, the Court said:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of Government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."

In Appeal of Hartranft, supra, the Court said:

"We had better at the outstart recognize the fact, that the executive department is a coordinate branch of the Government, with power to judge what should or should not be done, within its own department, and what of its own doings and communications should or should not be kept secret, and that with it, in the exercise of these constitutional powers, the courts have no more right to interfere, than has the executive, under like conditions, to interfere with the courts."

The information here involved was collected, and is chiefly valuable, for use by the executive branch of the Government in the execution of the laws. It can be of little, if any, value in conection with the framing of legislation or the performance of any other constitutional duty of the Congress. We do not undertake to investigate strikes as to their justification or the lack of it, but confine investigation to alleged violations of law, including of course violation of statutes designed to suppress subversive activity, and to general intelligence to guide executive policy. Certainly, the evil which would necessarily flow from its untimely publication would far outweigh any posible good.

I am not unmindful of your conditional suggestion that your counsel will keep this information inviolate until such time as the committee determines its disposition. I have no doubt that this pledge would be kept and that you would weigh every consideration before making any matter public. Unfortunately, however, a policy cannot be made anew because of personal confidence of the Attorney General in the integrity and good faith of a particular committee chairman. We cannot be put in the position of discriminating between committees or of attempting to judge between them, and their individual members, each of whom has access to information once placed in the hands of the committee.

Of course, where the public interest has semed to justify it, information as to particular situations has been supplied to congressional committees by me and by former Attorneys General. For example, I have

taken the position that committees called upon to pass on the confirmation of persons recommended for appointment by the Attorney General would be afforded confidential access to any information that we have—because no candidate's name is submitted without his knowledge and the Department does not intend to submit the name of any person whose entire history will not stand light. By way of further illustration, I may mention that pertinent information would be supplied in impeachment proceedings, usually instituted at the suggestion of the Department and for the good of the administration of justice.

It is for the reasons given that I feel it my duty to decline your request, believing that in them you will find justification for my refusal.

Respectfully,

ROBERT H. JACKSON.

Mr. DIRKSEN subsequently said: Mr. President, the distinguished Senator from Maine [Mr. PAYNE], has always manifested an abiding and scholarly interest in freedom of information. The Senate has passed House bill 2767, a companion bill to S. 921. Our colleague from Maine is unavoidably detained today. Therefore I ask unanimous consent that, following the consideration of S. 921 and prior to the passage of the House bill, there be printed in the RECORD a brief statement by the Senator from Maine.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR PAYNE

The statement has been made that human beings do not instinctively desire to live in a society where the basic freedoms prevail. Even sophisticated men take pleasure in marching in a procession which keeps perfect step with everyone acting in unison. It has only been through many centuries of bitter experience resulting from the distasteful effects of intolerance that men have learned they must master such impulses and adopt the opposite policy of giving a very wide latitude for the expression of diverse statements of fact and belief. By so doing, it was learned that human beings would lead happier, richer lives and the society which they composed would follow wiser and more fruitful courses.

The roots of freedom of the press indeed are very deep. As early as the 17th century in England when books were being printed in greater numbers and the Parliament of Puritans reestablished censorship, John Milton, in 1644 published with no license, Aeropagitica: A Speech for the Liberty of Unlicensed Printing, to the Parliament of England. The main theme of this publication was—"as good almost kill a man as kill a good book." "Give me," cried Milton, "the liberty to know, to utter, and to argue freely according to conscience, above all other liberties."

Likewise, as we all know, American colonists had done much thinking concerning freedom of the press long before the first article of the Bill of Rights was laid down as an inflexible mandate in 1791. As a matter of fact it was the suppression of such liberties by the English Crown within the colonies that played no small part in bringing about the rebellion which was climaxed by the open hostilities of the Revolutionary War. Freedom of expression was a basic requirement for a society made up of so many diverse elements. The colonists' backgrounds were as varied as the number of countries which they represented. In order to unite in any body politic and pursue a common purpose, it was necessary to foster the unrestricted freedom of expression.

The drafters of the Constitution of the new Nation thought the idea of freedom was too obvious even to be mentioned explicitly. When seeking to get the document ratified, however, men everywhere said, "Yes, we'll join, but be plainer about our liberty," and the price of ratification was the guarantee of freedoms safe from congressional interference.

For this reason, the first amendment was written. It said: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of people peacefull yto assemble and to petition the Government for a redress of grievance." Since that time this amendment has protected all Americans and safeguarded their rights. But, surprisingly enough, it has not been immune to occasional serious challenges which, if not met, could have greatly weakened American freedom.

The year 1798, for example, witnessed the passing of the Alien and Scdition Acts. The acts were passed by Congress to silence derogatory criticism of the Government and strengthen the hand of Government in an impending war with France. The Sedition Act was thoroughly denounced by Jefferson as contrary to the first amendment. He had voiccd his feelings earlier in a letter stating, "Our liberty depends on the freedom of the press, and that cannot be limited without being lost." The Alien and Sedition Acts became a partisan issue and gave the election of 1800 to Jefferson.

Another example of serious challenge occurred in December 1835, when President Andrew Jackson recommended to Congress that legislation be enacted to prevent the circulation of incendiary publications in the Southern States. "The pamphlets were being circulated through the mails attempting to incite the slaves to insurrection, and to produce a servile war," he said.

John C. Calhoun, reporting in behalf of the "Select Committee" of the Senate, presented a report which stated: "* * * they (the committee) have been constrained to adopt the position that Congress has not the power to pass such a law; that it would be a violation of one of the most sacred provisions of the Constitution, and subversive of reserved powers essential to the preservation of the domestic institutions of the slaveholding States, and, with them, their peace and security * * *"

Some of the most critical challenges to freedom of the press have occurred during wars. In periods of wartime, the Federal Government has often seen fit to limit the freedom of the press. The policy of our Government has never been to abolish freedom of the press but it has placed a number of restrictions on it. The limitations that have been placed on the press while this country has been involved in war have been for the purpose of forbidding the circulation of false reports or statements which would (1) interfere with the successful prosecution of the war, (2) cause insubordination or disloyalty in the Armed Forces, (3) obstruct recruiting of enlistment, or (4) degrade the form of Government of the United States and the Constitution.

It is noteworthy, however, that during World War II far less restriction was placed upon freedom of speech and press than had seemed necessary in earlier and lesscr struggles. This was a remarkable achievement for a democratic nation to accomplish when the entire nation was actively engaged in a total war effort.

The history of the first amendment has also been one of various interpretations. Zechariah Chafee, Jr., in his book entitled, "Freedom of Speech and Press," likens the extent of the freedom granted by the first amendment to the weights at two ends of the scales. At one end, the current estimate of the values proclaimed by the first amendment. At the other end, the current estimate of dangers from particular idcas to which a substantial portion of the community objects. A review of the first amendment reveals that the scales have tipped in opposite directions during various periods in our history. Many laws have been passed by Congress restricting the freedom granted by the first amendment during periods when public opinion made serious enough objection to what then seemed a national peril to give nccessary support for the passing of such legislation. It usually followed that after the immediate threat had passed and the Supreme Court had declared the act unconstitutional, the threat for which the legislation was enacted had subsided.

Within the past year, bills have been introduced in both Houses of Congress which provide for an amendment to section 161 of the Revised Statutes of the United States (5 U. S. C. 22). The amendment states: "This section does not authorize withholding information from the public or limiting the availability of records to the public." We have before us here today S. 921, which is the Senate's version of this amendment. Here again we have an opportunity to implement the first amendment, and urge passage of S. 921 as an important step in our efforts to preserve freedom of speech.

The original statute of 1789 authorized department heads to make regulations for the custody, use, and preservation of records. This statute has been seized upon in late years by department heads and other Government officials to withhold almost any information they did not want the American taxpayers to have. Often such information was withheld for no apparent reason. If this legislation is acted upon favorably by the Congress, it will be a step forward in making unclassified information available to the press, and through the press, to the American public. It is vital, therefore, that we in the Senate pass S. 921 and end this practice. It would represent another milestone in our efforts to preserve our precious right of freedom of the press.

The true vein of thought which undergirds the basic philosophy of American democracy which the first amendment guarantees was well stated by Justice Holmes in his famous dissent in the Abrams case when he said in part: "The best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their (the people's) wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."

Mr. PROXMIRE. Mr. President, as coauthor, along with the distinguished senior Senator from Missouri [Mr. HENNINGS], of Senate bill 921, the freedom of information bill, I may say that it strike a blow against secrecy in Government. This bill would help provide the essential fuel of democracy—public information.

I understand House bill 2767 has been substituted for Senate bill 941, but the two are companion bills.

As has been said, "A man's judgment is no better than his information." The same is true of a nation, and the men through whom it governs itself. Without information, judgment is distorted. The proposition with which we must begin is that there ought to be a completely free flow of information about the public's business. Any obstacle to

that free flow must be justified on its merits, and the justification submitted to the most rigorous and jealous scrutiny.

This bill removes a spurious and indefensible justification for withholding information. At least seven executive departments have withheld information, not only from the public but from Congress, under alleged authority found in section 161 of the Revised Statutes in a provision intended by Congress only to give them the necessary housekeeping powers over their records and papers and properties.

There is not one scintilla of evidence to support the notion that Congress ever meant the housekeeping provision to be used that way.

The Attorney General has said that when an executive agency uses its housekeeping authority that way it is interpreting the law wrong. The Attorney General is right, but perhaps the agencies did not hear him. In any event, it is a statute that is being misconstrued so Congress ought to spell out what it means.

More than that, we should not let pass an opportunity to strike a blow for freedom of information. How can the people control their government, unless they know what their government does? It is hard enough for people to know when they have full access to the facts, because the facts become every day more numerous and more difficult to understand. It must be admitted, too, that there is some information which must be withheld on grounds of national security. How unconscionable it is, then, to find excuses for secrecy where they were never meant to exist.

What happens when full and accurate information is denied the public? Partial and inaccurate information leaks out the back door. This is the second reason full disclosure is the best rule. It is no mere happenstance that the most scandalous journal of our day was titled "Confidential."

I am well aware that passing this bill will not assure a free flow of information from executive agencies about the public's business. There is still the enormous, amorphous obstacle which the Attorney General calls executive privilege. It is safe to bet that the agencies can make locks faster than the Congress can make keys. But passing this bill will serve the very good purpose of making clear that Congress has not meant, and does not mean, to provide the justification for secrecy in the conduct of government.

Mr. JOHNSON of Texas. Mr. President, the bill we are now considering is S. 921 which was reported favorably by the Committee on the Judiciary on May 21, 1958. In view of the fact that on April 16, 1958, the House of Representatives passed and sent to the Senate H. R. 2767, which is identical in language to S. 921 and which is now pending before the Committee on the Judiciary, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of H. R. 2767 and that the Senate proceed to its consideration. This procedure should greatly facilitate our consideration and disposition of this legislation in an orderly fashion.

The PRESIDING OFFICER. The House bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 2767) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Texas?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H. R. 2767) was read the third time, and passed.

The PRESIDING OFFICER. Without objection, Senate bill 921 is indefinitely postponed.

Mr. JOHNSON of Texas. Mr. President, I move to reconsider the vote by which H. R. 2767 was passed.

Mr. JOHNSTON of South Carolina. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF CIVIL SERVICE RETIREMENT ACT

Mr. JOHNSON of Texas. Mr. President, while the Senator from South Carolina [Mr. JOHNSTON] is on the floor, if he will submit a brief explanation of Calendar No. 1459, House bill 4640, then the Senator from Delaware [Mr. WILLIAMS] wishes to ask some questions.

I hope the Senate will act promptly on the bill; and then it can proceed to consider the motion of the Senator from Indiana [Mr. JENNER] for the reconsideration of the vote by which the Senate agreed to Senate Concurrent Resolution 109, a concurrent resolution to express the sense of the Congress on the establishment of the United Nations Force.

Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1459, House bill 4640.

The PRESIDING OFFICER (Mr. GOLDWATER in the chair). The bill will be stated by title, for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 4640) to amend the Civil Service Retirement Act with respect to payments from voluntary contributions accounts.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill (H. R. 4640) to amend the Civil Service Retirement Act with respect to payments from voluntary contributions benefits, which had been reported from the Committee on Post Office and Civil Service with amendments.

Mr. JOHNSTON of South Carolina. Mr. President, I move that the bill be amended by striking out, on page 2, the committee amendment beginning in line 7 and ending on page 8, in line 7.

The PRESIDING OFFICER. The motion will be stated.

Mr. JOHNSTON of South Carolina. Mr. President, after that motion is agreed to, the bill will then relate only to the subject contained in the bill as it passed the House.

Mr. WILLIAMS. Mr. President, I should like to have the motion of the Senator from South Carolina stated.

The PRESIDING OFFICER. The motion will be stated.

The LEGISLATIVE CLERK. It is moved to strike from the bill the committee amendment beginning in line 7 on page 2 and ending in line 7 on page 8, proposing to insert a new section, designated as section 3.

Mr. WILLIAMS. Mr. President, will the Senator from South Carolina yield?

Mr. JOHNSTON of South Carolina. I yield.

Mr. WILLIAMS. As I understand the motion of the Senator from South Carolina, it is to strike from the bill the entire committee amendment which we debated in the Senate approximately 1 month and a half ago and which amendment I had so vigorously opposed, it is the committee amendment which deals with the retirement benefits of Members of Congress and congressional employees.

Mr. JOHNSTON of South Carolina. That is correct, to a certain extent.

Mr. WILLIAMS. To what extent is it not correct?

Mr. JOHNSTON of South Carolina. Mr. President, the language being removed was discussed on the floor of the Senate some time ago.

Mr. WILLIAMS. To what extent is my statement not correct? I want this record clear.

The motion of the Senator from South Carolina would strike from the bill the entire committee amendment, beginning on line 7, on page 2, and ending on page 8, in line 7—in other words, you are striking out all the rest of the bill as reported by the committee.

Mr. JOHNSTON of South Carolina. That is correct.

Mr. WILLIAMS. That is the Senate committee amendment which proposed the inclusion of the language dealing with the retirement benefits of Members of Congress and congressional employees. It is my understanding that the pending motion of the Senator from South Carolina would strike from the bill the entire committee amendment which was the subject of the debate on the former occasion. Is that correct?

Mr. JOHNSTON of South Carolina. That is true.

Mr. WILLIAMS. If the motion of the Senator from South Carolina is agreed to, the bill will not contain any provision in regard to the retirement of Members of Congress or congressional employees; and the only portion of the bill which then will remain will be the language which was contained in the bill when it was passed by the House of Representatives; and that language which was contained in the bill when it was passed by the House of Representatives

only gives the employees who are leaving the Government service the right to withdraw their contributions in lieu of accepting retirement benefits. Is that correct?

Mr. JOHNSTON of South Carolina. That is correct.

Mr. WILLIAMS. To the extent that the bill as passed by the House of Representatives provided that any employee could withdraw his contributions on a voluntary basis in lieu of claiming retirement credit, there has never been any dispute about that proposal nor any objection to it. I stated that clearly at the time that I took exception to the Senate committee amendment which begins in line 7, on page 2, and ends in line 7, on page 8.

I had no objection to the provisions which were contained in the bill when it was passed by the House of Representatives; but I did object strenuously to the Senate committee amendment which would substantially multiply the benefits for congressional employees and Members of Congress.

It is now my understanding—and I should like to have the Senator from South Carolina verify it—that the motion the Senator from South Carolina has made would, if agreed to, result in striking from the bill all the language of the committee amendment dealing with the subject of retirement benefits for Members of Congress and congressional employees.

Mr. JOHNSTON of South Carolina. That is true.

Mr. WILLIAMS. Mr. President, I support such a motion or amendment; in fact, such an amendment should have been agreed to at the time when the bill was previously being debated by the Senate; and it is the amendment which I then announced I was going to offer if the bill had been acted on at that time. It is an amendment which, according to all logic and reason, should be adopted.

Frankly, this fantastic proposal never should have been brought before the Senate in the first place, but now that it is before us the committee amendment dealing with this suggestion should certainly be defeated. However, I think that before we act on this amendment there is a minor committee amendment which must be adopted.

The PRESIDING OFFICER. The bill has been reported by the committee with amendments; and the committee amendments will be considered first.

The first amendment of the committee will be stated.

The LEGISLATIVE CLERK. On page 1, at the beginning of line 7, it is proposed to strike out "he (1) is not eligible for immeidate or deferred annuity under this act or (2) elects such payment prior to receipt of and in lieu of" and insert "application for payment is filed with the Commission prior to receipt of any,".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The next amendment reported by the Committee on Post Office and Civil Service will be stated.

The LEGISLATIVE CLERK. On page 2, after line 6, it is proposed to insert a new section, as follows:

SEC. 3. (a) The Civil Service Retirement Act is amended as follows:

(1) Section 1 (3) is amended by inserting the words "or Member" after the word "employee", and by striking out the words "or a Member separated before he has completed 5 years of Member service".

(2) Section 3 (f) is amended by inserting after the word "employee' the words "or Member".

(3) Section 3 (h) is amended to read as follows:

"(h) No period of service which is used in the computation of the annuity of any employee or Member under any provision of this act shall be used in the computation of an annuity of such employee or Member under any other provision of this act."

(4) Section 4 (a) is amended by inserting before the period at the end of the first sentence a comma and the following: "except that after June 30, 1958, the amount of such deduction in the case of a congressional employee shall be 7½ percent of such basic salary".

(5) The table in section 4 (c) is amended by inserting after the word "Employee" the words "Service (other than congressional employee service)," by inserting after the matter relating to employees the following:

"Congressional employee service: 2½ percent, August 1, 1920, to June 30, 1926; 3½ percent, July 1, 1926, to June 30, 1942; 5 percent, July 1, 1942, to June 30, 1948; 6 percent, July 1, 1948, to October 31, 1956; 6½ percent, November 1, 1956, to June 30, 1958; 7½ percent, after June 30, 1958,"; and by striking out the words "Member for."

(6) Section 6 (e) is amended by inserting after the word "employee" the words "or Member."

(7) Section 6 (f) is amended to read as follows:

"(f) Any Member or any congressional employee eligible for an annuity under section 9 (b) who attains the age of 60 years and completes 10 years of service shall, upon separation from the service, be paid an annuity computed as provided in section 9. Any Member or any congressional employee eligible for an annuity under section 9 (b) who attains the age of 55 years and completes 30 years of service shall, upon separation from the service, be paid an annuity computed as provided in section 9. Any Member or any congressional employee eligible for an annuity under section 9 (b) who completes 25 years of service, or who attains the age of 50 years and completes 20 years of service, shall, upon separation from the service (other than by expulsion in the case of a Member, and other than by removal for cause on charges of misconduct or delinquency in the case of an employee), be paid an annuity computed as provided in section 9."

(8) Section 7 (a) is amended by striking out the words "Member service" and inserting in lieu thereof the words "civilian service."

(9) Section 8 (b) is amended by striking out the words "Member service" in the first sentence thereof and inserting in lieu thereof the words "civilian service"; and by striking out the last sentence thereof and inserting in lieu thereof the following: "Any Member or any congressional employee eligible for an annuity under section 9 (b) who is separated from the service after completing 10 or more years of Member or congressional employee service, or any combination thereof, may be paid an annuity beginning at the age of 60 years computed as provided in section 9."

(10) Section 9 (a) is amended by inserting after the word "employee" wherever it appears the words "or Member" and by inserting after "Provided," the following: "That annuity of an employee who has had Member or congressional employee service on or after the date of enactment of this proviso, and who has had deductions withheld from his salary or made deposit covering his last 5 years of civilian service, shall be (1) 2½ percent of the average salary multiplied by his Member or congressional employee service and so much of his military service as was performed subsequent to the beginning and prior to the end of his Member or congressional employee service, plus (2) 1½ percent of the average salary multiplied by so much of the remainder of his total service as does not exceed 5 years, plus (3) 1¾ percent of the average salary multiplied by so much of the remainder of his total service as exceeds 5 years but does not exceed 10 years, plus (4) 2 percent of the average salary multiplied by so much of the remainder of his total service as exceeds 10 years: *Provided further,*".

(11) The first sentence in section 9 (b) is amended to read as follows:

"(b) The annuity of a congressional employee retiring under this act shall, if he so elects at the time his annuity commences, be 2½ percent of the average salary multiplied by the total service."

(12) Section 9 (b) is amended by striking out clause (1) of the second sentence and inserting in lieu thereof the following: "(1) has had at least 5 years of Member or congressional employee service, or combination thereof," by inserting after the word "employee" in clause (3) of such sentence the words "or Member," and by inserting before the colon in the second sentence the words: "or retires for disability or dies while serving as a congressional employee or Member."

(13) Section 9 (c) is amended to read as follows:

"(c) The annuity of a Member retiring under this act shall, if he so elects at the time his annuity commences, be 2½ percent of the average salary multiplied by the total service. This subsection shall not apply unless the Member (1) has had at least 5 years of Member service or congressional employee service, or combination thereof, and (2) has had deductions withheld from his salary or made deposit covering his last 5 years of civilian service. In no case shall the annuity of a Member retiring under section 7 be less than (A) 40 percent of the average salary or (B) the sum obtained under this subsection after increasing his Member service by the period elapsing between the date of separation and the date he attains the age of 60 years, whichever is the lesser, but this provision shall not increase the annuity of any survivor."

(14) Section 9 (d) is amended to read as follows:

"(d) The annuity as hereinbefore provided, for an employee retiring under section 6 (b) or 6 (d) shall be reduced by one-twelfth of 1 percent for each full month not in excess of 60, and one-sixth of 1 percent for each full month in excess of 60, such employee is under the age of 60 years at the date of separation."

(15) Section 10 (c) of such act is amended by striking out "If an employee dies after completing at least 5 years of civilian service, or a Member dies after completing at least 5 years of Member service," and inserting in lieu thereof the following: "If an employee or a Member dies after completing at least 5 years of civilian service."

(16) Section 10 ((d) is amended by striking out "If an employee dies after completing 5 years of civilian service or a Member dies after completing 5 years of Member service" and inserting in lieu thereof the following: "If an employee or a Member dies after completing at least 5 years of civilian service."

(17) Section 10 is amended by adding at the end thereof a new subsection as follows:

"(f) In case a congressional employee eligible for annuity under section 9 (b), who is separated from service with title to a de-

Public Law 85-619
85th Congress, H. R. 2767
August 12, 1958

AN ACT

72 Stat. 547.

To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Approved August 12, 1958.

GPO 20139

IMMEDIATE RELEASE August 12, 1958

James C. Hagerty, Press Secretary to the President

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THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have today signed the bill H. R. 2767, "To amend Section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records." The purpose of this legislation is to make clear the intent of the Congress that Section 161 of the Revised Statutes shall not be cited as a justification for failing to disclose information which should be made public.

In its consideration of this legislation the Congress has recognized that the decision-making and investigative processes must be protected. It is also clear from the legislative history of the bill that it is not intended to, and indeed could not, alter the existing power of the head of an Executive department to keep appropriate information or papers confidential in the public interest. This power in the Executive Branch is inherent under the Constitution.

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